

State of Arizona
House of Representatives
Forty-fourth Legislature
Second Regular Session
2000

HOUSE BILL 2428

AN ACT

AMENDING SECTIONS 12-731, 12-741, 13-1801, 13-1802, 13-2001, 13-2002, 13-2003 AND 13-2301, ARIZONA REVISED STATUTES; TRANSFERRING AND RENUMBERING SECTION 13-2708, ARIZONA REVISED STATUTES, FOR PLACEMENT IN TITLE 13, CHAPTER 20, ARIZONA REVISED STATUTES, AS SECTION 13-2008; AMENDING SECTION 13-2008, ARIZONA REVISED STATUTES, AS TRANSFERRED AND RENUMBERED BY THIS ACT; AMENDING SECTION 13-2316, ARIZONA REVISED STATUTES; AMENDING TITLE 13, CHAPTER 23, ARIZONA REVISED STATUTES, BY ADDING SECTIONS 13-2316.01 AND 13-2316.02; REPEALING SECTIONS 13-2912, 13-2913 AND 13-2914, ARIZONA REVISED STATUTES; RENUMBERING SECTION 13-3004, ARIZONA REVISED STATUTES, AS SECTION 13-3001; RENUMBERING SECTION 13-3001, ARIZONA REVISED STATUTES, AS SECTION 13-3004; AMENDING SECTION 13-3001, ARIZONA REVISED STATUTES, AS RENUMBERED BY THIS ACT; AMENDING SECTIONS 13-3008, 13-3010, 13-3011, 13-3012, 13-3013 AND 13-3016, ARIZONA REVISED STATUTES; RENUMBERING SECTION 13-3018, ARIZONA REVISED STATUTES, AS SECTION 13-3019; AMENDING TITLE 13, CHAPTER 30, ARIZONA REVISED STATUTES, BY ADDING A NEW SECTION 13-3018; AMENDING SECTION 13-3019, AS RENUMBERED BY THIS ACT; AMENDING SECTIONS 13-3417, 13-3506, 13-3551 AND 13-3553, ARIZONA REVISED STATUTES; REPEALING SECTION 13-3508, ARIZONA REVISED STATUTES; RENUMBERING SECTIONS 13-3554, 13-3555 AND 13-3556, ARIZONA REVISED STATUTES, AS SECTIONS 13-3555, 13-3556 AND 13-3558, RESPECTIVELY; AMENDING TITLE 13, CHAPTER 35.1, ARIZONA REVISED STATUTES, BY ADDING A NEW SECTION 13-3554; AMENDING TITLE 13, CHAPTER 35.1, ARIZONA REVISED STATUTES, BY ADDING SECTIONS 13-3557 AND 13-3559; AMENDING SECTIONS 13-3707, 13-4801, 21-422, 31-281 AND 44-405, ARIZONA REVISED STATUTES; RELATING TO TECHNOLOGY CRIMES.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 12-731, Arizona Revised Statutes, is amended to
3 read:

4 12-731. Recovery of civil damages

5 A. Except as provided in ~~this section and section 13-3012~~ TITLE 13,
6 CHAPTER 30, any person whose wire, oral or electronic communication is
7 intentionally intercepted, disclosed or used in violation of ~~this chapter~~
8 TITLE 13, CHAPTER 30 may ~~in~~ BRING a civil action TO recover from the person
9 or entity ~~which~~ THAT engaged in ~~that~~ THE violation the following:

10 1. Such preliminary and other equitable or declaratory relief as may
11 be appropriate.

12 2. Damages in an amount ~~which~~ THAT is the greater of EITHER:

13 (a) The sum of the actual damages suffered by the plaintiff and any
14 profits made by the violator as a result of the violation.

15 (b) Statutory damages of one hundred dollars a day for each day of the
16 violation.

17 (c) Statutory damages of ten thousand dollars.

18 3. Punitive damages in appropriate cases.

19 4. Reasonable attorney fees and other reasonable costs of litigation.

20 B. A civil action under this section may not be commenced later than
21 one year after the date upon which the ~~claimant~~ PLAINTIFF first has a
22 reasonable opportunity to discover the violation.

23 Sec. 2. Section 12-741, Arizona Revised Statutes, is amended to read:

24 12-741. Definitions

25 In this article, unless the context otherwise requires:

26 1. "Buyer" means a person who leases, licenses or purchases any
27 product, equipment or service.

28 2. "Computer" has the same meaning prescribed in section 13-2301,
29 subsection E.

30 ~~3. "Computer network" has the same meaning prescribed in section~~
31 ~~13-2301, subsection E.~~

32 ~~4.~~ 3. "Computer program" has the same meaning prescribed in section
33 13-2301, subsection E.

34 ~~5.~~ 4. "Computer software" has the same meaning prescribed in section
35 13-2301, subsection E.

36 ~~6.~~ 5. "Computer system" has the same meaning prescribed in section
37 13-2301, subsection E.

38 ~~7.~~ 6. "Equipment" means any item that contains a product and that is
39 used to produce or deliver a product or service.

40 7. "NETWORK" HAS THE SAME MEANING PRESCRIBED IN SECTION 13-2301,
41 SUBSECTION E.

42 8. "Product" means any item that is:

43 (a) Directly or indirectly manufactured, created or delivered by or
44 that operates through the use of embedded chips or through the manipulation
45 of electronic or magnetic impulses, including any computer, ~~computer~~ network,

1 computer program, computer software or computer system or any constituent
2 component, any item that contains an integrated circuit or any other
3 electronics component.

4 (b) Directly or indirectly manufactured, created or delivered by or
5 that operates through the use of an integrated circuit or electronic
6 component.

7 9. "Remedial measures" means an action that is taken to improve the
8 efficacy of any product, equipment or service in order to lessen the
9 likelihood or consequences of a year 2000 date failure. These actions may
10 include:

11 (a) Modifications to the product, equipment or service.

12 (b) Changes in quality assurance procedures or policies.

13 (c) Modifications that are made to the design or method of
14 manufacturing, to manufacturing equipment or to the testing of the product,
15 equipment or service.

16 (d) Changes in or additions to training programs or safety education
17 programs.

18 (e) Personnel or human resources measures that are related to the
19 product, equipment or service.

20 (f) The use or modification of warnings or notices or changes to owner
21 manuals and related materials.

22 (g) The recall of products.

23 (h) The creation of a plan or instructions to be implemented in the
24 event of or to avoid a year 2000 date failure.

25 (i) Alternative services that are offered in connection with a service
26 to provide the buyer with the intended result of the service.

27 10. "Service" means any effort, function, labor, delivery, processing
28 or time that directly or indirectly involves the use of a product.

29 11. "Year 2000 compliance analysis or review" means any evaluation,
30 investigation, inquiry, review or other means by which a person seeks to
31 compute, determine, estimate, evaluate, predict or report the performance of
32 any product, equipment or service and that may be conducted by employees or
33 agents of the person, by a year 2000 consultant or by a government agency or
34 instrumentality.

35 12. "Year 2000 date failure" means either:

36 (a) The present or future failure or inability of a product or any
37 product or equipment that uses a product to accurately accept, compute,
38 compare, distinguish, generate, interpret, produce, recognize, sequence or
39 otherwise process, store or display correctly date and time data in, from,
40 into and between the years 1999 and 2000 and subsequent years, the twentieth
41 and twenty-first centuries and leap year computations.

42 (b) The present or future failure or inability of a service that uses
43 a product or equipment that fails or is not able to accurately accept,
44 compute, compare, distinguish, generate, interpret, produce, recognize,
45 sequence or otherwise process, store or display date and time data in, from,

1 into and between the years 1999 and 2000 and subsequent years, the twentieth
2 and twenty-first centuries and leap year computations.

3 ~~13. "Year 2000 date statement" means a statement that is material to a~~
4 ~~transaction made about a product that is manufactured or sold or about a~~
5 ~~service that is provided or sold regarding whether the product, equipment or~~
6 ~~service will result in a year 2000 date failure.~~

7 Sec. 3. Section 13-1801, Arizona Revised Statutes, is amended to read:

8 13-1801. Definitions

9 A. In this chapter, unless the context otherwise requires:

10 1. "Check" means any check, draft or other negotiable or nonnegotiable
11 instrument of any kind.

12 2. "Control" or "exercise control" means to act so as to exclude
13 others from using their property except on the defendant's own terms.

14 3. "Credit" means an express agreement with the drawee for the payment
15 of a check.

16 4. "Deprive" means to withhold the property interest of another either
17 permanently or for so long a time period that a substantial portion of its
18 economic value or usefulness or enjoyment is lost, ~~or~~ to withhold it with the
19 intent to restore it only upon payment of **ANY** reward or other compensation or
20 to transfer or dispose of it so that it is unlikely to be recovered.

21 5. "Draw" means making, drawing, uttering, preparing, writing or
22 delivering a check.

23 6. "Funds" ~~mean~~ **MEANS** money or credit.

24 7. "Issue" means to deliver or cause to be delivered a check to a
25 person who thereby acquires a right against the drawer with respect to the
26 check. A person who draws a check with **THE** intent that it be so delivered is
27 deemed to have issued it if the delivery occurs.

28 8. "Material misrepresentation" means **A** pretense, promise,
29 representation or statement of present, past or future fact ~~which~~ **THAT** is
30 fraudulent and ~~which~~ **THAT**, when used or communicated, is instrumental in
31 causing the wrongful control or transfer of property or services. The
32 pretense may be verbal or it may be a physical act.

33 9. "Means of transportation" means any vehicle.

34 10. "Obtain" means to bring about or **TO** receive the transfer of any
35 interest in property, whether to a defendant or to another, or to secure **THE**
36 performance of a service **OR THE POSSESSION OF A TRADE SECRET**.

37 11. "Pass" means, for a payee, holder or bearer of a check ~~which~~ **THAT**
38 previously has been or purports to have been drawn and issued by another, to
39 deliver a check, for a purpose other than collection, to a third person who
40 by delivery acquires a right with respect to the check.

41 **12. "PROPERTY" MEANS ANY THING OF VALUE, TANGIBLE OR INTANGIBLE,**
42 **INCLUDING TRADE SECRETS.**

43 ~~12.~~ 13. "Property of another" means property in which any person other
44 than the defendant has an interest **ON** which the defendant is not privileged
45 to infringe, including property in which the defendant also has an interest,

1 notwithstanding the fact that the other person might be precluded from civil
2 recovery because the property was used in an unlawful transaction or was
3 subject to forfeiture as contraband. Property in possession of the defendant
4 is not deemed property of another person who has only a security interest in
5 ~~such~~ THE property, even if legal title is in the creditor pursuant to a
6 security agreement.

7 ~~13.~~ 14. "Services" includes labor, professional ~~service~~ SERVICES,
8 transportation, cable television, ~~telephone~~ COMPUTER OR COMMUNICATION
9 SERVICES, gas or electricity services, accommodation in hotels, restaurants,
10 OR leased premises or elsewhere, admission to exhibitions and use of vehicles
11 or other movable property.

12 ~~14.~~ 15. "Value" means the fair market value of the property or
13 services at the time of the theft. Written instruments ~~which~~ THAT do not
14 have a readily ascertained market value have as their value either the face
15 amount of indebtedness less the portion satisfied or the amount of economic
16 loss involved in deprivation of the instrument, whichever is greater. When
17 property has AN undeterminable value THE TRIER OF FACT SHALL DETERMINE its
18 value ~~shall be determined by the trier of fact~~ and, in reaching its decision,
19 MAY CONSIDER all relevant evidence, ~~may be considered~~ including evidence of
20 ~~such~~ THE property's value to its owner.

21 B. IN DETERMINING THE CLASSIFICATION OF THE OFFENSE, THE STATE MAY
22 AGGREGATE IN THE INDICTMENT OR INFORMATION amounts taken in thefts committed
23 pursuant to one scheme or course of conduct, whether THE AMOUNTS WERE TAKEN
24 from one or several persons, ~~may be aggregated in the indictment or~~
25 ~~information at the discretion of the state in determining the classification~~
26 ~~of the offense.~~

27 Sec. 4. Section 13-1802, Arizona Revised Statutes, is amended to read:

28 13-1802. Theft; classification

29 A. A person commits theft if, without lawful authority, the person
30 knowingly:

31 1. Controls property of another with the intent to deprive the other
32 person of such property; or

33 2. Converts for an unauthorized term or use services or property of
34 another entrusted to the defendant or placed in the defendant's possession
35 for a limited, authorized term or use; or

36 3. Obtains ~~property or~~ services OR PROPERTY of another by means of any
37 material misrepresentation with intent to deprive the other person of such
38 property or services; or

39 4. Comes into control of lost, mislaid or misdelivered property of
40 another under circumstances providing means of inquiry as to the true owner
41 and appropriates such property to the person's own or another's use without
42 reasonable efforts to notify the true owner; or

43 5. Controls property of another knowing or having reason to know that
44 the property was stolen; or

1 6. Obtains services known to the defendant to be available only for
2 compensation without paying or an agreement to pay ~~such~~ THE compensation or
3 diverts another's services to the person's own or another's benefit without
4 authority to do so.

5 B. A person commits theft if the person knowingly takes control,
6 title, use or management of an incapacitated or vulnerable adult's assets or
7 property through intimidation or deception, as defined in section 46-456,
8 while acting in a position of trust and confidence and with the intent to
9 deprive the incapacitated or vulnerable adult of the asset or property.

10 C. The inferences set forth in section 13-2305 ~~shall~~ apply to any
11 prosecution under ~~the provisions of~~ subsection A, paragraph 5 of this
12 section.

13 D. AT THE CONCLUSION OF ANY GRAND JURY PROCEEDING, HEARING OR TRIAL,
14 THE COURT SHALL PRESERVE ANY TRADE SECRET THAT IS ADMITTED IN EVIDENCE OR ANY
15 PORTION OF A TRANSCRIPT THAT CONTAINS INFORMATION RELATING TO THE TRADE
16 SECRET PURSUANT TO SECTION 44-405.

17 ~~D.~~ E. Theft of property or services with a value of twenty-five
18 thousand dollars or more is a class 2 felony. Theft of property or services
19 with a value of three thousand dollars or more but less than twenty-five
20 thousand dollars is a class 3 felony. Theft of property or services with a
21 value of two thousand dollars or more but less than three thousand dollars is
22 a class 4 felony. Theft of property or services with a value of one thousand
23 dollars or more but less than two thousand dollars is a class 5 felony.
24 Theft of property or services with a value of two hundred fifty dollars or
25 more but less than one thousand dollars is a class 6 felony. Theft of any
26 property or services valued at less than two hundred fifty dollars is a class
27 1 misdemeanor, unless such property is taken from the person of another or is
28 a firearm, in which case the theft is a class 6 felony.

29 ~~E.~~ F. A person who is convicted of a violation of subsection A,
30 paragraph 1 or 3 of this section that involved property with a value of one
31 hundred thousand dollars or more is not eligible for suspension of sentence,
32 probation, pardon or release from confinement on any basis except pursuant to
33 section 31-233, subsection A or B until the sentence imposed by the court has
34 been served, the person is eligible for release pursuant to section
35 41-1604.07 or the sentence is commuted.

36 Sec. 5. Section 13-2001, Arizona Revised Statutes, is amended to read:

37 13-2001. Definitions

38 In this chapter, unless the context otherwise requires:

39 1. "ACCESS DEVICE" MEANS ANY CARD, TOKEN, CODE, ACCOUNT NUMBER,
40 ELECTRONIC SERIAL NUMBER, MOBILE OR PERSONAL IDENTIFICATION NUMBER, PASSWORD,
41 ENCRYPTION KEY, BIOMETRIC IDENTIFIER OR OTHER MEANS OF ACCOUNT ACCESS,
42 INCLUDING A CANCELED OR REVOKED ACCESS DEVICE, THAT CAN BE USED ALONE OR IN
43 CONJUNCTION WITH ANOTHER ACCESS DEVICE TO OBTAIN MONEY, GOODS, SERVICES,
44 COMPUTER OR NETWORK ACCESS OR ANY OTHER THING OF VALUE OR THAT CAN BE USED TO
45 INITIATE A TRANSFER OF ANY THING OF VALUE.

1 ~~1-~~ 2. "Coin machine" means a coin box, turnstile, vending machine or
2 other mechanical, electrical,~~—~~ or electronic device or receptacle **THAT IS**
3 designed to receive a coin or bill of a certain denomination or a token made
4 for such purpose,~~—~~ and **THAT**, in return for the insertion or deposit ~~thereof~~
5 **OF THE COIN, BILL OR TOKEN**, automatically ~~to offer, provide, assist~~ **OFFERS,**
6 **PROVIDES, ASSISTS** in providing or ~~permit~~ **PERMITS** the acquisition or use of
7 some property or service.

8 ~~2-~~ 3. "Complete written instrument" means a written instrument ~~which~~
9 **THAT** purports to be genuine and fully drawn with respect to every essential
10 feature ~~thereof~~.

11 ~~6-~~ 4. "~~To~~ Falsely ~~alter~~ **ALTERS** a written instrument" means to change
12 **A COMPLETE OR INCOMPLETE WRITTEN INSTRUMENT**, without the permission of anyone
13 entitled to grant it, ~~a written instrument, whether complete or incomplete,~~
14 by means of erasure, obliteration, deletion, insertion of new matter,~~—~~ **OR**
15 transposition of matter or in any other manner, so that the altered
16 instrument falsely appears or purports to be in all respects an authentic
17 creation of its ostensible maker or authorized by him.

18 ~~7-~~ 5. "~~To~~ Falsely ~~complete~~ **COMPLETES** a written instrument" means to
19 transform an incomplete written instrument into a complete one by adding,
20 inserting or changing matter without the permission of anyone entitled to
21 grant it, so that the complete written instrument falsely appears or purports
22 to be in all respects an authentic creation of its ostensible maker or
23 authorized by him.

24 ~~8-~~ 6. "~~To~~ Falsely ~~make~~ **MAKES** a written instrument" means to make or
25 draw a complete or incomplete written instrument ~~which~~ **THAT** purports to be an
26 authentic creation of its ostensible maker but ~~which~~ **THAT** is not either
27 because the ostensible maker is fictitious, or because, if real, ~~he~~ **THE**
28 **OSTENSIBLE MAKER** did not authorize the making or drawing of ~~such~~ **THE** written
29 instrument.

30 ~~3-~~ 7. "Forged instrument" means a written instrument ~~which~~ **THAT** has
31 been falsely made, completed or altered.

32 ~~4-~~ 8. "Incomplete written instrument" means a written instrument
33 ~~which~~ **THAT** contains some matter by way of content or authentication but ~~which~~
34 **THAT** requires additional matter to render it a complete written instrument.

35 9. **"PERSONAL IDENTIFYING INFORMATION" MEANS A NAME, ELECTRONIC**
36 **IDENTIFIER OR SCREEN NAME, BIOMETRIC IDENTIFIER, DRIVER LICENSE NUMBER,**
37 **ACCESS DEVICE, RESIDENCE OR MAILING ADDRESS, TELEPHONE NUMBER, EMPLOYER,**
38 **STUDENT OR MILITARY IDENTIFICATION NUMBER, SOCIAL SECURITY NUMBER OR BIRTH**
39 **DATE.**

40 ~~5-~~ 10. "Slug" means an object, article or device ~~which~~ **THAT** by virtue
41 of its size, **ITS** shape or any other quality is capable of being inserted,
42 deposited or otherwise used in a coin machine as a fraudulent substitute for
43 a genuine token, lawful coin,~~—~~ or bill of the United States.

44 ~~9-~~ 11. "Written instrument" means **EITHER:**

1 (a) Any paper, document or other instrument ~~containing~~ THAT CONTAINS
2 written or printed matter or its equivalent; ~~or~~.

3 (b) Any token, stamp, seal, badge, trademark, GRAPHICAL IMAGE, ACCESS
4 DEVICE or other evidence or symbol of value, right, privilege or
5 identification.

6 Sec. 6. Section 13-2002, Arizona Revised Statutes, is amended to read:
7 13-2002. Forgery; classification

8 A. A person commits forgery if, with intent to defraud, ~~such~~ THE
9 person:

- 10 1. Falsely makes, completes or alters a written instrument; or
11 2. Knowingly possesses a forged instrument; or
12 3. Offers or presents, whether accepted or not, a forged instrument or
13 one ~~which~~ THAT contains false information.

14 B. THE POSSESSION OF FIVE OR MORE FORGED INSTRUMENTS MAY GIVE RISE TO
15 AN INFERENCE THAT THE INSTRUMENTS ARE POSSESSED WITH AN INTENT TO DEFRAUD.

16 ~~B-~~ C. Forgery is a class 4 felony.

17 Sec. 7. Section 13-2003, Arizona Revised Statutes, is amended to read:
18 13-2003. Criminal possession of a forgery device;

19 classification

20 A. A person commits criminal possession of a forgery device if ~~such~~
21 THE person EITHER:

22 1. Makes or possesses with knowledge of its character any plate, die,
23 or other device, apparatus, equipment, SOFTWARE, ACCESS DEVICE or article
24 specifically designed or adapted for use in forging written instruments; ~~or~~.

25 2. Makes or possesses any device, apparatus, equipment, SOFTWARE,
26 ACCESS DEVICE or article adaptable for use in forging written instruments
27 with intent to use it or to aid or permit another to use it for purposes of
28 forgery.

29 B. SUBSECTION A, PARAGRAPH 1 DOES NOT APPLY TO PEACE OFFICERS OR
30 PROSECUTORS IN THE PERFORMANCE OF THEIR DUTIES.

31 ~~B- C. Criminal possession of a forgery device in A VIOLATION OF~~
32 subsection A, paragraph 1 is a class 6 felony. ~~Criminal possession of a~~
33 ~~forgery device in A VIOLATION OF~~ subsection A, paragraph 2 is a class 5
34 felony.

35 Sec. 8. Section 13-2708, Arizona Revised Statutes, is transferred and
36 renumbered for placement in title 13, chapter 20, Arizona Revised Statutes,
37 as section 13-2008 and, as so renumbered, is amended to read:

38 13-2008. Taking identity of another person; classification

39 A. A person commits taking the identity of another person if the
40 person knowingly takes ~~the name, birth date or social security number~~ OR USES
41 ANY PERSONAL IDENTIFYING INFORMATION of another person, without the consent
42 of that other person, with the intent to obtain or use the other person's
43 identity for any unlawful purpose or to cause loss to a person.

1 B. A PEACE OFFICER IN ANY JURISDICTION IN WHICH AN ELEMENT OF THE
2 OFFENSE IS COMMITTED OR A RESULT OF THE OFFENSE OCCURS MAY TAKE A REPORT.

3 C. IF A DEFENDANT IS ALLEGED TO HAVE COMMITTED MULTIPLE VIOLATIONS OF
4 THIS SECTION WITHIN THE SAME COUNTY, THE PROSECUTOR MAY FILE A COMPLAINT
5 CHARGING ALL OF THE VIOLATIONS AND ANY RELATED CHARGES UNDER OTHER SECTIONS
6 THAT HAVE NOT BEEN PREVIOUSLY FILED IN THE JUSTICE OF THE PEACE PRECINCT IN
7 WHICH THE GREATEST NUMBER OF VIOLATIONS ARE ALLEGED TO HAVE OCCURRED.

8 ~~B.~~ D. Taking the identity of another person is a class ~~5-~~ 4 felony.

9 E. FOR THE PURPOSES OF THIS SECTION, "VICTIM" INCLUDES A PERSON WHOSE
10 PERSONAL IDENTIFYING INFORMATION IS TAKEN OR USED WITHOUT CONSENT, WHETHER OR
11 NOT THE VICTIM ACTUALLY SUFFERS ANY ECONOMIC LOSS AS A RESULT OF THE OFFENSE.

12 Sec. 9. Section 13-2301, Arizona Revised Statutes, is amended to read:

13 ~~13-2301.~~ Definitions

14 A. For the purposes of sections 13-2302 ~~through~~, 13-2303 AND 13-2304:

15 ~~6-~~ 1. "~~To~~ Collect an extension of credit" means to induce in any way
16 any person to make repayment ~~thereof~~ OF THAT EXTENSION.

17 ~~1-~~ 2. "Creditor" means any person making ~~such~~ an extension of credit
18 or any person claiming by, under, ~~or~~ or through any person making ~~such~~ an
19 extension of credit.

20 ~~2-~~ 3. "Debtor" means any person to whom ~~such~~ an extension of credit
21 is made or any person who guarantees the repayment of an extension of credit,
22 or in any manner undertakes to indemnify the creditor against loss resulting
23 from the failure of any person to whom an extension is made to repay the ~~same~~
24 EXTENSION.

25 ~~7-~~ 4. "~~To~~ Extend credit" means to make or renew any loan or to enter
26 into any agreement, tacit or express, whereby the repayment or satisfaction
27 of any debt or claim, whether acknowledged or disputed, valid or invalid, and
28 however arising, may or shall be deferred.

29 ~~3-~~ 5. "Extortionate extension of credit" means any extension of
30 credit with respect to which it is the understanding of the creditor and the
31 debtor at the time ~~such~~ THE extension is made that delay in making repayment
32 or failure to make repayment could result in the use of violence or other
33 criminal means to cause harm to the person or the reputation or property of
34 any person.

35 ~~4-~~ 6. "Extortionate means" means the use, or an express or implicit
36 threat of use, of violence or other criminal means to cause harm to the
37 person or the reputation or property of any person.

38 ~~5-~~ 7. "Repayment of any extension of credit" means the repayment,
39 satisfaction or discharge in whole or in part of any debt or claim,
40 acknowledged or disputed, valid or invalid, resulting from or in connection
41 with that extension of credit.

42 B. For the purposes of ~~sections~~ SECTION 13-2305 ~~through~~, 13-2306 OR
43 13-2307:

44 1. "Dealer in property" means a person who buys and sells property as
45 a business.

1 2. "Stolen property" means property OF ANOTHER AS DEFINED IN SECTION
2 13-1801 that has been the subject of any unlawful taking.

3 3. "Traffic" means to sell, transfer, distribute, dispense or
4 otherwise dispose of stolen property to another person, or to buy, receive,
5 possess or obtain control of stolen property, with THE intent to sell,
6 transfer, distribute, dispense or otherwise dispose of THE PROPERTY to
7 another person.

8 C. For the purposes of this chapter:

9 1. "Combination" means persons who collaborate in carrying on or
10 furthering the activities or purposes of a criminal syndicate even though
11 such persons may not know each other's identity, membership in the
12 combination changes from time to time or one or more members may stand in a
13 wholesaler-retailer or other arm's length relationship with others as to
14 activities or dealings between or among themselves in an illicit operation.

15 2. "Criminal syndicate" means any combination of persons or
16 enterprises engaging, or having the purpose of engaging, on a continuing
17 basis in conduct which THAT violates any one or more provisions of any felony
18 statute of this state.

19 D. For the purposes of sections 13-2312 through 13-2315, unless the
20 context otherwise requires:

21 1. "Control", in relation to an enterprise, means the possession of
22 sufficient means to permit substantial direction over the affairs of an
23 enterprise and, in relation to property, means to acquire or possess.

24 2. "Enterprise" means any corporation, partnership, association, labor
25 union, or other legal entity or any group of persons associated in fact
26 although not a legal entity.

27 3. "Financial institution" means any business under the jurisdiction
28 of the state banking department or a banking or securities regulatory agency
29 of the United States or a business under the jurisdiction of the securities
30 division of the corporation commission, the state real estate department or
31 the department of insurance.

32 4. "Racketeering" means any act, including any preparatory or
33 completed offense, which THAT is committed for financial gain, which THAT is
34 chargeable or indictable under the laws of the state in which the act
35 occurred and, if the act occurred in a state other than this state, which
36 THAT would be chargeable or indictable under the laws of this state had IF
37 the act HAD occurred in this state and which THAT would be punishable by
38 imprisonment for more than one year, regardless of whether such act is
39 charged or indicted, involving:

40 (a) Homicide.

41 (b) Robbery.

42 (c) Kidnapping.

43 (d) Forgery.

44 (e) Theft.

45 (f) Bribery.

- 1 (g) Gambling.
2 (h) Usury.
3 (i) Extortion.
4 (j) Extortionate extensions of credit.
5 (k) Prohibited drugs, marijuana or other prohibited chemicals or
6 substances.
7 (l) Trafficking in explosives, weapons or stolen property.
8 (m) Participating in a criminal syndicate.
9 (n) Obstructing or hindering criminal investigations or prosecutions.
10 (o) Asserting false claims including, but not limited to, false claims
11 asserted through fraud or arson.
12 (p) Intentional or reckless false statements or publications
13 concerning land for sale or lease or sale of subdivided lands or sale and
14 mortgaging of unsubdivided lands.
15 (q) Resale of realty with intent to defraud.
16 (r) Intentional or reckless fraud in the purchase or sale of
17 securities.
18 (s) Intentional or reckless sale of unregistered securities or real
19 property securities.
20 (t) A scheme or artifice to defraud.
21 (u) Obscenity.
22 ~~(v) Child pornography.~~
23 (v) SEXUAL EXPLOITATION OF CHILDREN.
24 (w) Prostitution.
25 (x) Restraint of trade or commerce in violation of section 34-252.
26 (y) Terrorism.
27 (z) Money laundering.
28 (aa) Obscene or indecent telephone communications to minors for
29 commercial purposes.
30 (bb) Counterfeiting marks as proscribed in section 44-1453.
31 5. "Records" means any book, paper, writing, ~~record~~, computer program,
32 ~~or other material~~ DATA, IMAGE OR INFORMATION THAT IS COLLECTED, RECORDED,
33 PRESERVED OR MAINTAINED IN ANY FORM OF STORAGE MEDIUM.
34 6. ~~To~~ Remedy racketeering" means to enter a civil judgment pursuant
35 to this chapter or chapter 39 of this title against property or a person who
36 is subject to liability, including liability for injury to the state that is
37 caused by racketeering or by actions in concert with racketeering.
38 E. For the purposes of ~~section~~ SECTIONS 13-2316, 13-2316.01 AND
39 13-2316.02:
40 1. "Access" means to ~~approach~~, instruct, communicate with, store data
41 in, retrieve data from or otherwise make use of any resources of a computer,
42 computer system or ~~computer~~ network.
43 2. "ACCESS DEVICE" MEANS ANY CARD, TOKEN, CODE, ACCOUNT NUMBER,
44 ELECTRONIC SERIAL NUMBER, MOBILE OR PERSONAL IDENTIFICATION NUMBER, PASSWORD,
45 ENCRYPTION KEY, BIOMETRIC IDENTIFIER OR OTHER MEANS OF ACCOUNT ACCESS,

1 INCLUDING A CANCELED OR REVOKED ACCESS DEVICE, THAT CAN BE USED ALONE OR IN
2 CONJUNCTION WITH ANOTHER ACCESS DEVICE TO OBTAIN MONEY, GOODS, SERVICES,
3 COMPUTER OR NETWORK ACCESS OR ANY OTHER THING OF VALUE OR THAT CAN BE USED TO
4 INITIATE A TRANSFER OF ANY THING OF VALUE.

5 ~~2-~~ 3. "Computer" means an electronic device ~~which~~ THAT performs
6 logic, arithmetic or memory functions by the manipulations of electronic or
7 magnetic impulses and includes all input, output, processing, storage,
8 software or communication facilities ~~which~~ THAT are connected or related to
9 such a device in a system or network.

10 ~~3. "Computer network" means the interconnection of communication lines~~
11 ~~with a computer through remote terminals or a complex consisting of two or~~
12 ~~more interconnected computers.~~

13 4. "COMPUTER CONTAMINANT" MEANS ANY SET OF COMPUTER INSTRUCTIONS THAT
14 IS DESIGNED TO MODIFY, DAMAGE, DESTROY, RECORD OR TRANSMIT INFORMATION WITHIN
15 A COMPUTER, COMPUTER SYSTEM OR NETWORK WITHOUT THE INTENT OR PERMISSION OF
16 THE OWNER OF THE INFORMATION, COMPUTER SYSTEM OR NETWORK. COMPUTER
17 CONTAMINANT INCLUDES A GROUP OF COMPUTER INSTRUCTIONS, SUCH AS VIRUSES OR
18 WORMS, THAT IS SELF-REPLICATING OR SELF-PROPAGATING AND THAT IS DESIGNED TO
19 CONTAMINATE OTHER COMPUTER PROGRAMS OR COMPUTER DATA, TO CONSUME COMPUTER
20 RESOURCES, TO MODIFY, DESTROY, RECORD OR TRANSMIT DATA OR IN SOME OTHER
21 FASHION TO USURP THE NORMAL OPERATION OF THE COMPUTER, COMPUTER SYSTEM OR
22 NETWORK.

23 ~~4-~~ 5. "Computer program" means a series of instructions or
24 statements, in a form acceptable to a computer, ~~which~~ THAT permits the
25 functioning of a computer system in a manner designed to provide appropriate
26 products from ~~such~~ THE computer system.

27 ~~5-~~ 6. "Computer software" means a set of computer programs,
28 procedures and associated documentation concerned with the operation of a
29 computer system.

30 ~~6-~~ 7. "Computer system" means a set of related, connected or
31 unconnected computer equipment, devices and software, INCLUDING STORAGE,
32 MEDIA AND PERIPHERAL DEVICES.

33 8. "CRITICAL INFRASTRUCTURE RESOURCE" MEANS ANY COMPUTER OR
34 COMMUNICATIONS SYSTEM OR NETWORK THAT IS INVOLVED IN PROVIDING SERVICES
35 NECESSARY TO ENSURE OR PROTECT THE PUBLIC HEALTH, SAFETY OR WELFARE,
36 INCLUDING SERVICES THAT ARE PROVIDED BY ANY OF THE FOLLOWING:

- 37 (a) MEDICAL PERSONNEL AND INSTITUTIONS.
- 38 (b) EMERGENCY SERVICES AGENCIES.
- 39 (c) PUBLIC AND PRIVATE UTILITIES, INCLUDING WATER, POWER,
40 COMMUNICATIONS AND TRANSPORTATION SERVICES.
- 41 (d) FIRE DEPARTMENTS, DISTRICTS OR VOLUNTEER ORGANIZATIONS.
- 42 (e) LAW ENFORCEMENT AGENCIES.
- 43 (f) FINANCIAL INSTITUTIONS.
- 44 (g) PUBLIC EDUCATIONAL INSTITUTIONS.
- 45 (h) GOVERNMENT AGENCIES.

1 9. "FALSE OR FRAUDULENT PRETENSE" MEANS THE UNAUTHORIZED USE OF AN
2 ACCESS DEVICE OR THE USE OF AN ACCESS DEVICE TO EXCEED AUTHORIZED ACCESS.

3 ~~7.~~ 10. "Financial instrument" means any check, draft, money order,
4 certificate of deposit, letter of credit, bill of exchange, credit card or
5 marketable security or any other written instrument, ~~as defined by IN~~
6 section 13-2001, ~~paragraph 7, which~~ THAT is transferable for value.

7 11. "NETWORK" INCLUDES A COMPLEX OF INTERCONNECTED COMPUTER OR
8 COMMUNICATION SYSTEMS OF ANY TYPE.

9 ~~8.~~ 12. "Property" means financial instruments, information, including
10 electronically produced data, computer software and programs in either
11 machine or human readable form, and anything of value, tangible or
12 intangible.

13 13. "PROPRIETARY OR CONFIDENTIAL COMPUTER SECURITY INFORMATION" MEANS
14 INFORMATION ABOUT A PARTICULAR COMPUTER, COMPUTER SYSTEM OR NETWORK THAT
15 RELATES TO ITS ACCESS DEVICES, SECURITY PRACTICES, METHODS AND SYSTEMS,
16 ARCHITECTURE, COMMUNICATIONS FACILITIES, ENCRYPTION METHODS AND SYSTEM
17 VULNERABILITIES AND THAT IS NOT MADE AVAILABLE TO THE PUBLIC BY ITS OWNER OR
18 OPERATOR.

19 ~~9.~~ 14. "Services" includes computer time, data processing, ~~and~~
20 storage functions AND ALL TYPES OF COMMUNICATION FUNCTIONS.

21 Sec. 10. Section 13-2316, Arizona Revised Statutes, is amended to
22 read:

23 13-2316. Computer tampering; venue; forfeiture; classification

24 A. A person WHO ACTS WITHOUT AUTHORITY OR WHO EXCEEDS AUTHORIZATION OF
25 USE commits computer ~~fraud in the first degree~~ TAMPERING BY:

26 1. Accessing, altering, damaging or destroying ~~without authorization~~
27 ~~or exceeding authorization of use of~~ any computer, computer system, ~~computer~~
28 OR network, or any part of ~~such A~~ A computer, COMPUTER system or network, with
29 the intent to devise or execute any scheme or artifice to defraud or deceive,
30 or TO control property or services by means of false or fraudulent pretenses,
31 representations or promises.

32 2. KNOWINGLY ALTERING, DAMAGING, DELETING OR DESTROYING COMPUTER
33 PROGRAMS OR DATA.

34 3. KNOWINGLY INTRODUCING A COMPUTER CONTAMINANT INTO ANY COMPUTER,
35 COMPUTER SYSTEM OR NETWORK.

36 4. RECKLESSLY DISRUPTING OR CAUSING THE DISRUPTION OF COMPUTER,
37 COMPUTER SYSTEM OR NETWORK SERVICES OR DENYING OR CAUSING THE DENIAL OF
38 COMPUTER OR NETWORK SERVICES TO ANY AUTHORIZED USER OF A COMPUTER, COMPUTER
39 SYSTEM OR NETWORK.

40 5. RECKLESSLY USING A COMPUTER, COMPUTER SYSTEM OR NETWORK TO ENGAGE
41 IN A SCHEME OR COURSE OF CONDUCT THAT IS DIRECTED AT ANOTHER PERSON AND THAT
42 SERIOUSLY ALARMS, TORMENTS, THREATENS OR TERRORIZES THE PERSON. FOR THE
43 PURPOSES OF THIS PARAGRAPH, THE CONDUCT MUST BOTH:

44 (a) CAUSE A REASONABLE PERSON TO SUFFER SUBSTANTIAL EMOTIONAL
45 DISTRESS.

(b) SERVE NO LEGITIMATE PURPOSE.

6. PREVENTING A COMPUTER USER FROM EXITING A SITE, COMPUTER SYSTEM OR NETWORK-CONNECTED LOCATION IN ORDER TO COMPEL THE USER'S COMPUTER TO CONTINUE COMMUNICATING WITH, CONNECTING TO OR DISPLAYING THE CONTENT OF THE SERVICE, SITE OR SYSTEM.

7. KNOWINGLY OBTAINING ANY INFORMATION THAT IS REQUIRED BY LAW TO BE KEPT CONFIDENTIAL OR ANY RECORDS THAT ARE NOT PUBLIC RECORDS BY ACCESSING ANY COMPUTER, COMPUTER SYSTEM OR NETWORK THAT IS OPERATED BY THIS STATE, A POLITICAL SUBDIVISION OF THIS STATE OR A MEDICAL INSTITUTION.

~~B. 8. A person commits computer fraud in the second degree by intentionally and without authorization or by exceeding authorization~~ KNOWINGLY accessing, ~~altering, damaging or destroying~~ any computer, computer system or ~~computer~~ network or any computer software, program or data THAT IS contained in ~~such~~ A computer, computer system or ~~computer~~ network.

B. IN ADDITION TO SECTION 13-109, A PROSECUTION FOR A VIOLATION OF THIS SECTION MAY BE TRIED IN ANY OF THE FOLLOWING COUNTIES:

1. THE COUNTY IN WHICH THE VICTIMIZED COMPUTER, COMPUTER SYSTEM OR NETWORK IS LOCATED.

2. THE COUNTY IN WHICH THE COMPUTER, COMPUTER SYSTEM OR NETWORK THAT WAS USED IN THE COMMISSION OF THE OFFENSE IS LOCATED OR IN WHICH ANY BOOKS, RECORDS, DOCUMENTS, PROPERTY, FINANCIAL INSTRUMENTS, COMPUTER SOFTWARE, DATA, ACCESS DEVICES OR INSTRUMENTS OF THE OFFENSE WERE USED.

3. THE COUNTY IN WHICH ANY AUTHORIZED USER WAS DENIED SERVICE OR IN WHICH AN AUTHORIZED USER'S SERVICE WAS INTERRUPTED.

4. THE COUNTY IN WHICH CRITICAL INFRASTRUCTURE RESOURCES WERE TAMPERED WITH OR AFFECTED.

C. ON CONVICTION OF A VIOLATION OF THIS SECTION, THE COURT SHALL ORDER THAT ANY COMPUTER SYSTEM OR INSTRUMENT OF COMMUNICATION THAT WAS OWNED OR USED EXCLUSIVELY BY THE DEFENDANT AND THAT WAS USED IN THE COMMISSION OF THE OFFENSE BE FORFEITED AND SOLD, DESTROYED OR OTHERWISE PROPERLY DISPOSED.

D. A VIOLATION OF SUBSECTION A, PARAGRAPH 6 OF THIS SECTION CONSTITUTES AN UNLAWFUL PRACTICE UNDER SECTION 44-1522 AND IS IN ADDITION TO ALL OTHER CAUSES OF ACTION, REMEDIES AND PENALTIES THAT ARE AVAILABLE TO THIS STATE. THE ATTORNEY GENERAL MAY INVESTIGATE AND TAKE APPROPRIATE ACTION PURSUANT TO TITLE 44, CHAPTER 10, ARTICLE 7.

~~C. E.~~ E. Computer ~~fraud in the first degree~~ TAMPERING PURSUANT TO SUBSECTION A, PARAGRAPH 1 OF THIS SECTION is a class 3 felony. Computer ~~fraud in the second degree~~ TAMPERING PURSUANT TO SUBSECTION A, PARAGRAPH 2, 3 OR 4 OF THIS SECTION is a class ~~5~~ 4 felony, UNLESS THE COMPUTER, COMPUTER SYSTEM OR NETWORK TAMPERED WITH IS A CRITICAL INFRASTRUCTURE RESOURCE, IN WHICH CASE IT IS A CLASS 2 FELONY. COMPUTER TAMPERING PURSUANT TO SUBSECTION A, PARAGRAPH 5 OF THIS SECTION IS A CLASS 5 FELONY. COMPUTER TAMPERING PURSUANT TO SUBSECTION A, PARAGRAPH 7 OR 8 OF THIS SECTION IS A CLASS 6 FELONY.

1 Sec. 11. Title 13, chapter 23, Arizona Revised Statutes, is amended by
2 adding sections 13-2316.01 and 13-2316.02, to read:

3 13-2316.01. Unlawful possession of an access device;
4 classification

5 A. A PERSON COMMITS UNLAWFUL POSSESSION OF AN ACCESS DEVICE BY
6 KNOWINGLY POSSESSING, TRAFFICKING IN, PUBLISHING OR CONTROLLING AN ACCESS
7 DEVICE WITHOUT THE CONSENT OF THE ISSUER, OWNER OR AUTHORIZED USER AND WITH
8 THE INTENT TO USE OR DISTRIBUTE THAT ACCESS DEVICE.

9 B. THE POSSESSION, TRAFFICKING, PUBLISHING OR CONTROL OF FIVE OR MORE
10 ACCESS DEVICES WITHOUT THE CONSENT OF THE ISSUER, OWNER OR AUTHORIZED USER
11 MAY GIVE RISE TO AN INFERENCE THAT THE PERSON POSSESSING, TRAFFICKING IN,
12 PUBLISHING OR CONTROLLING THE ACCESS DEVICES INTENDED TO USE OR DISTRIBUTE
13 THE DEVICES.

14 C. UNLAWFUL POSSESSION OF ONE HUNDRED OR MORE ACCESS DEVICES IS A
15 CLASS 4 FELONY. UNLAWFUL POSSESSION OF FIVE OR MORE BUT FEWER THAN ONE
16 HUNDRED ACCESS DEVICES IS A CLASS 5 FELONY. UNLAWFUL POSSESSION OF FEWER
17 THAN FIVE ACCESS DEVICES IS A CLASS 6 FELONY.

18 13-2316.02. Unauthorized release of proprietary or confidential
19 computer security information; exceptions;
20 classification

21 A. A PERSON COMMITS UNAUTHORIZED RELEASE OF PROPRIETARY OR
22 CONFIDENTIAL COMPUTER SECURITY INFORMATION BY COMMUNICATING, RELEASING OR
23 PUBLISHING PROPRIETARY OR CONFIDENTIAL COMPUTER SECURITY INFORMATION,
24 SECURITY-RELATED MEASURES, ALGORITHMS OR ENCRYPTION DEVICES RELATING TO A
25 PARTICULAR COMPUTER, COMPUTER SYSTEM OR NETWORK WITHOUT THE AUTHORIZATION OF
26 ITS OWNER OR OPERATOR.

27 B. THE FOLLOWING ARE EXEMPT FROM THIS SECTION:

28 1. THE RELEASE BY PUBLISHERS, VENDORS, USERS AND RESEARCHERS OF
29 WARNINGS OR INFORMATION ABOUT SECURITY MEASURES OR DEFECTS IN SOFTWARE,
30 HARDWARE OR ENCRYPTION PRODUCTS IF THE RELEASE OF THE WARNINGS OR INFORMATION
31 IS NOT SPECIFIC TO A PARTICULAR OWNER'S OR OPERATOR'S COMPUTER, COMPUTER
32 SYSTEM OR NETWORK.

33 2. THE RELEASE OF SECURITY INFORMATION AMONG THE AUTHORIZED USERS OF A
34 COMPUTER, COMPUTER SYSTEM OR NETWORK OR THE NOTIFICATION TO THE OWNER OR
35 OPERATOR OF A COMPUTER, COMPUTER SYSTEM OR NETWORK OF A PERCEIVED SECURITY
36 THREAT.

37 3. THE RELEASE OF SECURITY INFORMATION IN CONNECTION WITH THE
38 RESEARCH, DEVELOPMENT AND TESTING OF SECURITY-RELATED MEASURES, PRODUCTS OR
39 DEVICES IF THE RELEASE OF THE SECURITY INFORMATION IS NOT SPECIFIC TO A
40 PARTICULAR OWNER'S OR OPERATOR'S COMPUTER, COMPUTER SYSTEM OR NETWORK.

41 C. AT THE CONCLUSION OF ANY GRAND JURY, HEARING OR TRIAL, THE COURT
42 SHALL PRESERVE PURSUANT TO SECTION 44-405 ANY PROPRIETARY COMPUTER SECURITY
43 INFORMATION THAT WAS ADMITTED IN EVIDENCE OR ANY PORTION OF A TRANSCRIPT THAT
44 CONTAINS INFORMATION RELATING TO PROPRIETARY COMPUTER SECURITY INFORMATION.

1 D. UNAUTHORIZED RELEASE OF PROPRIETARY OR CONFIDENTIAL COMPUTER
2 SECURITY INFORMATION IS A CLASS 6 FELONY, UNLESS THE SECURITY INFORMATION
3 RELATES TO A CRITICAL INFRASTRUCTURE RESOURCE, IN WHICH CASE IT IS A CLASS 4
4 FELONY.

5 Sec. 12. Repeal

6 Sections 13-2912, 13-2913 and 13-2914, Arizona Revised Statutes, are
7 repealed.

8 Sec. 13. Renumber

9 Section 13-3001, Arizona Revised Statutes, is renumbered as section
10 13-3004.

11 Sec. 14. Section 13-3004, Arizona Revised Statutes, is renumbered as
12 section 13-3001 and, as so renumbered, is amended to read:

13 13-3001. Definitions

14 In this chapter, unless the context otherwise requires:

15 1. "Aural transfer" means a communication containing the human voice
16 at any point between and including the point of origin and the point of
17 reception.

18 2. "CHILD MONITORING DEVICE" MEANS A DEVICE THAT IS CAPABLE OF
19 TRANSMITTING AN AUDIO OR AUDIOVISUAL SIGNAL AND THAT IS INSTALLED OR USED IN
20 A RESIDENCE FOR CHILD SUPERVISION OR SAFETY MONITORING BY ANY PARENT,
21 GUARDIAN OR OTHER RESPONSIBLE PERSON IN THE PERSON'S OWN RESIDENCE.

22 ~~2.~~ 3. "Communication service provider" means any person engaged in
23 providing a service ~~which~~ THAT allows its users to send or receive ORAL, wire
24 or electronic communications OR COMPUTER SERVICES.

25 ~~3.~~ 4. "Electronic communication" means any transfer of signs,
26 signals, writing, images, sounds, data or intelligence of any nature THAT IS
27 transmitted in whole or in part by a wire, radio, electromagnetic,
28 photoelectronic or photooptical system but THAT does not include any of the
29 following:

30 (a) Any wire or oral communication.

31 (b) Any communication made through a tone-only paging device.

32 (c) Any communication from a tracking device.

33 ~~4.~~ 5. "Electronic communication system" means any communication or
34 computer facilities or related electronic equipment for the transmission,
35 processing or electronic storage of electronic communications.

36 ~~5.~~ 6. "Electronic storage" means either of the following:

37 (a) Any temporary, intermediate storage of a wire or electronic
38 communication incidental to the electronic transmission.

39 (b) Any storage of the communication by an electronic communication
40 service provider for purposes of backup protection of the communication.

41 ~~6.~~ 7. "Intercept" means the aural or other acquisition of the
42 contents of any wire, electronic or oral communication through the use of any
43 electronic, mechanical or other device.

44 ~~7.~~ 8. "Oral communication" means a spoken communication THAT IS
45 uttered by a person exhibiting an expectation that such communication is not

1 subject to interception under circumstances justifying ~~such~~ **THE** expectation,—
2 but does not include any electronic communication.

3 ~~8-~~ 9. "Pen register" means a device ~~which~~ **THAT** records or decodes
4 electronic or other impulses ~~which~~ **THAT** identify the numbers dialed or
5 otherwise transmitted on the telephone line or communication facility to
6 which the device is attached.

7 ~~9-~~ 10. "Person" means any individual, enterprise, public or private
8 corporation, unincorporated association, partnership, firm, society,
9 governmental authority or entity, including the subscriber to the
10 communication service involved, and any law enforcement officer.

11 ~~10-~~ 11. "Readily accessible to the general public" means a radio
12 communication that is not:

13 (a) Scrambled or encrypted.

14 (b) Transmitted using modulation techniques with essential parameters
15 that have been withheld from the public to preserve the privacy of the
16 communication.

17 (c) Carried on a subcarrier or other signal subsidiary to a radio
18 transmission.

19 (d) Transmitted over a communication system provided by a common
20 carrier, unless the communication is a tone-only paging system communication.

21 (e) Transmitted on frequencies allocated under part 25, subpart D, E
22 or F or part 74 or part 94 of the rules of the federal communications
23 commission. If a communication transmitted on a frequency allocated under
24 part 74 is not exclusively allocated to broadcast auxiliary services, the
25 communication is a two-way voice communication system by radio.

26 ~~11-~~ 12. "Remote computing service" means providing to the public any
27 computer storage or processing services by means of an electronic
28 communication system.

29 ~~12-~~ 13. "Trap and trace device" means a device ~~which~~ **THAT** captures the
30 incoming electronic or other impulses ~~which~~ **THAT** identify the originating
31 number of an instrument or device from which a wire or electronic
32 communication was transmitted.

33 ~~13-~~ 14. "Wire communication" means any aural transfer ~~which~~ **THAT** is
34 made in whole or in part through the use of facilities for the transmission
35 of communications by the aid of **ANY** wire, cable or other like connection
36 between the point of origin and the point of reception, including the use of
37 a connection in a switching station, and that is furnished or operated by any
38 person engaged in providing or operating the facilities for the transmission
39 of communications. Wire communication ~~also~~ includes any electronic storage
40 of the communication.

41 Sec. 15. Section 13-3008, Arizona Revised Statutes, is amended to
42 read:

43 13-3008. Possession of interception devices; classification

44 **A. IT IS UNLAWFUL FOR** a person ~~who has~~ **TO HAVE** in his possession or
45 control any device, contrivance, machine or apparatus designed or primarily

1 useful for THE interception of wire, electronic or oral communications as
2 defined in section ~~13-3004, intending~~ 13-3001 WITH THE INTENT to unlawfully
3 use or employ or allow the ~~same~~ DEVICE, CONTRIVANCE, MACHINE OR APPARATUS to
4 be ~~so~~ used or employed for THE interception, or having reason to know the
5 ~~same~~ DEVICE, CONTRIVANCE, MACHINE OR APPARATUS is intended to be so used, ~~is~~
6 ~~guilty of a class 6 felony.~~

7 B. All property possessed or controlled by any person in violation of
8 this section is subject to seizure and forfeiture pursuant to chapter 39 of
9 this title.

10 C. A PERSON WHO VIOLATES THIS SECTION IS GUILTY OF A CLASS 6 FELONY.

11 Sec. 16. Section 13-3010, Arizona Revised Statutes, is amended to
12 read:

13 13-3010. Ex parte order for interception; definition

14 A. ~~An ex parte order for interception of wire, electronic or oral~~
15 ~~communications may be issued by any justice of the supreme court, judge of~~
16 ~~the court of appeals or judge of the superior court upon~~ ON application of a
17 county attorney, ~~or~~ the attorney general or ~~such~~ a prosecuting ~~attorneys as~~
18 ~~they may designate in writing, along with the supporting oath or affirmation~~
19 ~~of the investigating peace officer of the state or of any political~~
20 ~~subdivision of the state, where~~ ATTORNEY WHOM A COUNTY ATTORNEY OR THE
21 ATTORNEY GENERAL DESIGNATES IN WRITING, ANY JUSTICE OF THE SUPREME COURT,
22 JUDGE OF THE COURT OF APPEALS OR SUPERIOR COURT JUDGE MAY ISSUE AN EX PARTE
23 ORDER FOR THE INTERCEPTION OF WIRE, ELECTRONIC OR ORAL COMMUNICATIONS IF
24 there is probable cause to believe BOTH:

25 1. ~~That~~ A crime has been, is being or is about to be committed, ~~and~~
26 ~~there is probable cause to believe.~~

27 2. ~~That~~ Evidence of ~~such~~ THAT crime or the location of a fugitive from
28 justice from that crime may be obtained by THE interception.

29 B. An application under subsection A shall be made in writing and upon
30 the oath or affirmation of the applicant. It shall include:

31 1. The name and title of the applicant.

32 2. A full and complete statement of the facts and circumstances relied
33 upon by the applicant, including the supporting oath or affirmation of the
34 investigating peace officer ~~OF THIS STATE OR ANY POLITICAL SUBDIVISION OF~~
35 ~~THIS STATE~~ to justify the officer's belief that an order should be issued, ~~including.~~ THE STATEMENT SHALL INCLUDE:

37 (a) Details as to the particular crime that has been, is being or is
38 about to be committed.

39 (b) The identity of the person, if known, committing the offense and
40 whose communications are to be intercepted.

41 (c) A particular description of the type of communications sought to
42 be intercepted.

43 (d) A particular description of the nature, identification and
44 location of the communication facility from which or the place where the
45 communication is to be intercepted. If the identification or specific

1 description of the communication facility from which or the place where the
2 communication is to be intercepted is not practical, the affidavit in support
3 of the application must state ~~the reasons~~ why ~~such~~:

4 (i) Specification is impractical, ~~and the reasons why~~.

5 (ii) Interception from any facility or at any place where the
6 communication may occur is necessary.

7 3. A full and complete statement as to whether or not other
8 investigative procedures have been tried and failed or why they reasonably
9 appear to be unlikely to succeed if tried or to be too dangerous.

10 4. A statement of the period of time for which the interception is
11 required to be maintained. If the nature of the investigation is such that
12 authorization to intercept should not automatically terminate when the
13 described type of communication has been first obtained, **THE STATEMENT SHALL**
14 **INCLUDE** a particular description of facts establishing probable cause to
15 believe that additional communications of the same type will occur ~~thereafter~~
16 **AFTER THE COMMUNICATION HAS BEEN FIRST OBTAINED**.

17 5. A full and complete statement of the facts concerning all previous
18 applications known to the individual authorizing and making the application,
19 made to any judge for authorization to intercept, or for approval of
20 interceptions of communications involving any of the same persons, facilities
21 or places specified in the application, and the action taken by the judge on
22 each ~~such~~ application.

23 6. ~~Where~~ **IF** the application is for the extension of an order, a
24 statement setting forth the results thus far obtained from the interception,
25 or a reasonable explanation of the failure to obtain such results.

26 C. Upon proper application, a judge may enter an ex parte order
27 **AUTHORIZING INTERCEPTION**, as requested or with any appropriate modifications,
28 ~~authorizing interception~~ if ~~he~~ **THE JUDGE** determines on the basis of the facts
29 submitted by the applicant that:

30 1. There is probable cause to believe that a person is committing, has
31 committed, ~~or is about to commit a particular crime~~ ~~included within~~
32 ~~subsection A~~.

33 2. There is probable cause to believe that particular communications
34 concerning that offense will be obtained through ~~such~~ **THE** interception.

35 3. Normal investigative procedures have been tried and have failed or
36 reasonably appear to be unlikely to succeed if tried or to be too dangerous.

37 4. There is probable cause to believe any of the following:

38 (a) Wire or electronic communications concerning the offense are being
39 made or are about to be made by the person over the communication facilities
40 for which interception authority is granted.

41 (b) Oral communications concerning the offense are being made or are
42 about to be made by the person in the location for which interception
43 authority is granted.

1 (c) Communications concerning the offense are being made or are about
2 to be made by the person in different and changing locations, or from
3 different and changing facilities.

4 D. Each order authorizing the interception of any wire, electronic or
5 oral communication shall specify **ALL OF THE FOLLOWING**:

6 1. The identity of the person, if known, whose communications are to
7 be intercepted.

8 2. The nature and location of the communication facilities as to
9 which, ~~or the place where,~~ authority to intercept is granted. If authority
10 is granted to intercept communications of a person wherever that person is
11 located or from whatever communication facility is used, the order shall so
12 state and shall include any limitations imposed by the authorizing judge as
13 to location, time or manner of the interception. The order shall state that
14 the interception shall not begin until the facilities from which or the place
15 where the communication is to be intercepted is ascertained by the person
16 implementing the interception order.

17 3. A particular description of the type of communication sought to be
18 intercepted, ~~and a statement of the particular offense to which it relates.~~

19 4. The identity of the agency authorized to intercept the
20 communications, ~~and of the person authorizing the application.~~

21 5. The period of time during which ~~such~~ **THE** interception is
22 authorized, including a statement as to whether or not the interception shall
23 automatically terminate when the described communication has been first
24 obtained.

25 6. That the authorization for interception be executed as soon as
26 practicable, that it be conducted in such a way as to minimize **THE**
27 interception of communications not otherwise subject to interception under
28 this section and that it ~~shall~~ terminate upon attainment of the authorized
29 objective or on the date specified, whichever comes first.

30 7. That entry may be made to service, install or remove interception
31 devices or equipment, ~~if such~~ entry is necessary to effect the interception.

32 E. ~~No~~ **AN** order **THAT IS** entered under this section may **NOT** authorize
33 the interception of any wire or oral communication for any period **THAT IS**
34 longer than is necessary to achieve the objective of the authorization, ~~in~~
35 ~~any event no longer than~~ **AND THAT EXCEEDS** thirty days. This thirty day
36 period begins on the earlier of the day on which the interception actually
37 begins under the order or ten days after the order is signed. **THE COURT MAY**
38 **GRANT** extensions of any order ~~may be granted, but only upon~~ **IF AN** application
39 for an extension **IS** made ~~in accordance with~~ **PURSUANT TO** subsection A and the
40 court ~~making~~ **MAKES** the findings required by subsection C. The period of
41 extension shall be no longer than the authorizing judge deems necessary to
42 achieve the purposes for which it was granted and ~~in no event for longer than~~
43 **SHALL NOT EXCEED** thirty days.

44 F. Any ex parte order for interception, together with the papers ~~upon~~
45 **ON** which the application was based, shall be delivered to and retained by the

1 applicant during the duration of the interception as authority for the
 2 interception authorized ~~therein~~ IN THE ORDER. THE JUSTICE OR JUDGE ISSUING
 3 THE ORDER SHALL RETAIN a true copy of ~~such~~ THE order ~~shall~~ at all times ~~be~~
 4 ~~retained by the judge or justice issuing the order.~~

5 G. WITHIN TEN DAYS after the termination of the authorized
 6 interception, applications made and orders granted under this ~~statute~~ SECTION
 7 shall ~~within ten days~~ be returned to and sealed by the judge. Custody of the
 8 applications and orders shall be wherever the judge directs. ~~Such~~ THE
 9 applications and orders shall be disclosed only ~~upon~~ ON a showing of good
 10 cause before a judge of competent jurisdiction or as otherwise provided.

11 H. IF POSSIBLE, the contents of any communication THAT IS intercepted
 12 by any means authorized by this ~~statute~~ SECTION shall, ~~if possible,~~ be
 13 recorded on ANY tape, electronic, wire or other comparable device. The
 14 recording of the contents of any wire, electronic or oral communication under
 15 this subsection shall be done in such a way as will protect the recording
 16 from editing or alterations. Within ten days after the termination of the
 17 authorized interception, ~~such~~ THE recordings shall be made available to the
 18 judge ~~issuing such~~ WHO ISSUED THE order and SHALL BE sealed under the judge's
 19 directions. Custody of the recordings shall be maintained pursuant to court
 20 order. The recordings shall BE KEPT FOR TEN YEARS AND SHALL not be destroyed
 21 except on an order of the issuing judge or ~~other~~ ANOTHER judge of competent
 22 jurisdiction ~~and in any event shall be kept for ten years.~~

23 I. Within ninety days after an application under subsection A is
 24 denied, or the period of an order or ~~extensions thereof~~ ANY EXTENSION
 25 expires, the issuing or denying judge shall ~~cause~~ SERVE the persons named in
 26 the order or application, ~~and~~ ~~such~~ ANY other parties to THE intercepted
 27 communications as the judge may determine the interests of justice require, ~~to be served~~
 28 with an inventory, including notice of all of the following:

- 29 1. The fact of the entry of the order or the application.
- 30 2. The date of the entry and the period of authorized interception, or
- 31 the denial of the application.
- 32 3. The fact that during the period OF AUTHORIZED INTERCEPTION wire,
- 33 electronic or oral communications were or were not intercepted. On motion,
- 34 the judge may ~~in the judge's discretion~~ make available to ~~such~~ THE person or
- 35 the person's ~~counsel~~ ATTORNEY for inspection such portions of the intercepted
- 36 communications, applications and order as the judge determines to be in the
- 37 interest of justice. On an ex parte showing of good cause to the judge, the
- 38 serving of the notice required by this subsection may be postponed.

39 J. ON REQUEST OF THE APPLICANT, any order authorizing interception
 40 shall, ~~upon the request of the applicant,~~ direct that the communication
 41 service provider, landlords, custodians or other persons furnish the
 42 applicant with all information, facilities, ~~and~~ technical assistance
 43 necessary to accomplish the interception unobtrusively and with a minimum of
 44 interference with the services that ~~such~~ THESE persons are according the
 45 person whose communications are to be intercepted.

1 K. The order may require written reports to be made to the issuing
2 judge at specified intervals showing the progress made toward achieving the
3 authorized objective and the need for continued interception.

4 L. Any order authorizing THE interception of wire communications
5 pursuant to this chapter is also deemed to authorize THE interception of any
6 electronic communication ~~which~~ THAT may be made over the same equipment or by
7 the same facility.

8 M. If the intercepted communication is in a code or foreign language
9 and an expert in that code or foreign language is not reasonably available
10 during the interception period, minimization may be accomplished as soon as
11 practicable after ~~such~~ THE interception.

12 N. An interception under this chapter may be conducted in whole or in
13 part by government personnel or by an individual operating under a contract
14 with the government or acting under the supervision of a law enforcement
15 officer WHO IS authorized to conduct the interception.

16 O. The applicant is responsible for providing to the administrative
17 office of the United States courts all reports on applications for or
18 ~~interception~~ INTERCEPTIONS of wire, electronic or oral communications THAT
19 ARE required by federal statutes.

20 P. For the purposes of this section, "crime" means murder, gaming,
21 kidnapping, robbery, bribery, extortion, theft, ~~offenses defined in AN ACT IN~~
22 VIOLATION OF chapter 23 of this title, dealing in narcotic drugs, marijuana
23 or dangerous drugs, SEXUAL EXPLOITATION OF CHILDREN IN VIOLATION OF CHAPTER
24 35.1 OF THIS TITLE or any felony that is dangerous to life, limb or property
25 ~~or any~~. CRIME INCLUDES conspiracy to commit any of the offenses listed in
26 this subsection.

27 Sec. 17. Section 13-3011, Arizona Revised Statutes, is amended to
28 read:

29 13-3011. Disclosing confidential information relating to ex
30 parte order; exceptions; classification

31 A. Except in any trial, hearing or other judicial proceeding, a person
32 ~~who~~ SHALL NOT knowingly ~~discloses~~ DISCLOSE to ~~any~~ ANOTHER person, ~~other than~~
33 ~~the communication service provider whose facilities are involved, or an~~
34 ~~employee or other authorized agent of the county attorney, attorney general,~~
35 ~~sheriff or police officer making application for an order permitting~~
36 ~~interception or installation of a pen register or trap and trace device,~~ any
37 information concerning EITHER:

38 1. The application for, ~~OR~~ the granting or denial of orders for THE
39 interception or installation of a pen register or trap and trace device, ~~or~~
40 A REQUEST FOR THE PRESERVATION OF RECORDS OR EVIDENCE PURSUANT TO SECTION
41 13-3016 OR A SUBPOENA ISSUED PURSUANT TO SECTION 13-3018.

42 2. The identity of the person or persons whose communications are the
43 subject of an ex parte order, SUBPOENA OR RECORDS PRESERVATION REQUEST
44 granted pursuant to sections 13-3010, 13-3015, 13-3016, ~~and~~ 13-3017 ~~shall be~~
45 ~~guilty of a class 1 misdemeanor~~ AND 13-3018.

1 B. SUBSECTION A OF THIS SECTION DOES NOT APPLY TO THE DISCLOSURE OF
2 INFORMATION TO THE COMMUNICATION SERVICE PROVIDER WHOSE FACILITIES ARE
3 INVOLVED OR TO AN EMPLOYEE OR OTHER AUTHORIZED AGENT OF THE COUNTY ATTORNEY,
4 ATTORNEY GENERAL OR LAW ENFORCEMENT AGENCY THAT APPLIES FOR AN ORDER
5 PERMITTING INTERCEPTION OR INSTALLATION OF A PEN REGISTER OR TRAP AND TRACE
6 DEVICE OR WHO REQUESTS THE PRESERVATION OF RECORDS OR EVIDENCE PURSUANT TO
7 SECTION 13-3016 OR A SUBPOENA ISSUED PURSUANT TO SECTION 13-3018.

8 ~~B.~~ C. Notwithstanding subsection A of this section, a peace officer
9 or prosecuting attorney who, ~~by any means authorized by sections 13-3010,~~
10 ~~13-3015, 13-3016 and 13-3017,~~ obtains knowledge of the contents of a wire,
11 electronic or oral communication, ~~AS AUTHORIZED BY SECTIONS 13-3010,~~
12 ~~13-3015, 13-3016, 13-3017 AND 13-3018~~ or evidence derived from ~~such~~ THAT
13 knowledge, may:

14 1. Disclose the contents of the communication to a peace officer or
15 prosecuting attorney to the extent the disclosure is appropriate to the
16 proper performance of the official duties of the peace officer or prosecuting
17 attorney making or receiving the disclosure.

18 2. Use the contents of the communication to the extent THAT the use is
19 appropriate to the proper performance of the official duties of the peace
20 officer or prosecuting attorney.

21 D. A PERSON WHO VIOLATES THIS SECTION IS GUILTY OF A CLASS 1
22 MISDEMEANOR.

23 Sec. 18. Section 13-3012, Arizona Revised Statutes, is amended to
24 read:

25 13-3012. Exemptions

26 The following are exempt from the provisions of this chapter:

27 1. THE interception of wire, electronic or oral communications, THE
28 installation and operation of a pen register or trap and trace device, ~~or~~ THE
29 providing of information, facilities or technical assistance to an
30 investigative or law enforcement officer pursuant to a subpoena or an ex
31 parte order granted pursuant to sections 13-3010, 13-3015, 13-3016, ~~and~~
32 13-3017 AND 13-3018 or an emergency interception made in good faith pursuant
33 to section 13-3015, including any of the foregoing acts by a communication
34 service provider or its officers, agents or employees.

35 2. The normal use of services, equipment and facilities THAT ARE
36 provided by a communication service provider pursuant to tariffs on file with
37 the ARIZONA corporation commission ~~of the state of Arizona~~ or the federal
38 communications commission and the normal functions of any operator of a
39 switchboard.

40 3. Any officer, agent or employee of a communication service provider
41 who performs acts THAT ARE otherwise prohibited by this article in providing,
42 constructing, maintaining, repairing, operating or using the provider's
43 services, equipment or facilities, protecting the provider's service,
44 equipment and facilities from illegal use in violation of tariffs on file
45 with the ARIZONA corporation commission ~~of this state~~ or the federal

1 communications commission and protecting the provider from the commission of
2 fraud against it.

3 4. Providing requested information or **ANY** other response to a
4 subpoena or other order issued by a court of competent jurisdiction or on
5 demand of **ANY** other lawful authority.

6 5. **THE** interception of wire or electronic communications or the use of
7 a pen register or trap and trace device ~~in any of the following instances~~ **BY**
8 **A COMMUNICATION SERVICE PROVIDER IF THE INTERCEPTION OR USE EITHER:**

9 (a) ~~By a provider of a wire or electronic communication service~~
10 ~~relating~~ **RELATES** to the operation, maintenance and testing of that service,
11 ~~relating to~~ the protection of the rights or property of the provider or
12 ~~relating to~~ the protection of users of that service from fraudulent, abusive
13 or unlawful use of that service.

14 (b) ~~By a provider of a wire or electronic communication service to~~
15 ~~record~~ **RECORDS** the fact that a wire or electronic communication was initiated
16 or completed in order to protect the provider, another provider furnishing
17 service toward the completion of the communication, or a user of that
18 service from fraudulent, unlawful or abusive use of that service.

19 ~~(c) If consent of the user or subscriber of that service has been~~
20 ~~obtained.~~

21 6. The interception of any radio communication that is transmitted:

22 (a) By any station for the use of the general public or if the
23 transmission relates to ships, aircraft, vehicles or persons in distress.

24 (b) By any government, law enforcement, civil defense, private land
25 mobile or public safety communication system, including police and fire
26 systems, **AND** that ~~are~~ **IS** readily accessible to the general public.

27 (c) By any station that operates on an authorized frequency within the
28 bands that are allocated to the amateur, citizens band or general mobile
29 radio services.

30 (d) By any marine or aeronautical communications system.

31 (e) Through a system using frequencies that are monitored by persons
32 who are engaged in the provision or the use of the system or by other persons
33 using the same frequency if the communication is not scrambled or encrypted.

34 7. **THE** interception of wire or electronic communication if the
35 transmission is causing harmful interference to any lawfully operating
36 station or consumer electronic equipment, to the extent necessary to identify
37 the source of the interference.

38 8. The use of a pen register or trap and trace device by a ~~provider or~~
39 ~~subscriber of a wire or electronic~~ communication service **PROVIDER** for billing
40 or recording as an incident to billing for communication services, or for
41 cost accounting or other like purposes in the ordinary course of business.

42 9. The interception of any wire, electronic or oral communication by
43 any person, if the interception is effected with the consent of a party to
44 the communication or a person **WHO IS** present during the communication, **OR THE**

1 INSTALLATION OF A PEN REGISTER OR TRAP AND TRACE DEVICE WITH THE CONSENT OF A
2 USER OR SUBSCRIBER TO THE SERVICE.

3 10. Divulging the contents of a wire or electronic communication to a
4 law enforcement agency by a remote computing service or communication service
5 provider, officer or employee if ~~such~~ THE contents were lawfully or
6 inadvertently obtained by the service provider and appear to pertain to the
7 commission of a crime.

8 11. The interception or access of AN electronic communication THAT IS
9 made through an electronic communication system AND that is configured so
10 that the electronic communication is readily accessible to the general
11 public.

12 ~~12. The interception of radio communication that is transmitted:~~

13 ~~(a) By a station for the use of the general public or ships, aircraft,~~
14 ~~vehicles or persons in distress.~~

15 ~~(b) By a governmental, law enforcement, civil defense, private land,~~
16 ~~mobile or public safety communications system, including police and fire.~~

17 ~~(c) By a station operating on an authorized frequency within the bands~~
18 ~~allocated to the amateur, citizens band or general mobile radio services.~~

19 ~~(d) By a marine or aeronautical communications system.~~

20 ~~13. The interception of a wire or electronic communication the~~
21 ~~transmission of which is causing harmful interference to a lawfully operating~~
22 ~~station or consumer electronic equipment to identify the source of this~~
23 ~~interference.~~

24 ~~14.~~ 12. For other users of the same frequency to intercept a radio
25 communication THAT IS made through a system that uses frequencies monitored
26 by individuals who provide or use the system, if the communication is not
27 scrambled or encrypted.

28 13. THE INTERCEPTION OF ORAL COMMUNICATIONS BY MEANS OF A CHILD
29 MONITORING DEVICE.

30 Sec. 19. Section 13-3013, Arizona Revised Statutes, is amended to
31 read:

32 13-3013. Defenses

33 THE FOLLOWING CONSTITUTE A COMPLETE DEFENSE TO ANY CIVIL OR CRIMINAL
34 ACTION BROUGHT UNDER THIS CHAPTER OR UNDER ANY OTHER LAW:

35 1. A good faith reliance on an ex parte order or subpoena THAT IS
36 issued pursuant to section 13-3010, 13-3015, 13-3016, ~~or~~ 13-3017 OR 13-3018,
37 ~~or.~~

38 2. Providing information pursuant to section 13-3012, ~~or.~~

39 3. Providing assistance, information or facilities for an emergency
40 interception pursuant to section 13-3015, ~~or.~~

41 4. Disclosing stored electronic communications or ~~creating and~~
42 ~~delivering a backup copy~~ PRESERVING RECORDS, CONTENT OR EVIDENCE pursuant to
43 section 13-3016, ~~or.~~

44 5. Providing equipment, information or assistance to render stored
45 electronic communications ~~or a backup copy~~ in a usable form pursuant to

1 section 13-3016, ~~shall constitute a complete defense to any civil or criminal~~
2 ~~action brought under this chapter or under any other law.~~

3 Sec. 20. Section 13-3016, Arizona Revised Statutes, is amended to
4 read:

5 13-3016. Stored oral, wire and electronic communications;
6 agency access; backup preservation; delayed notice;
7 records preservation request; violation;
8 classification

9 A. ~~The provisions of~~ This section ~~apply~~ APPLIES to ORAL, WIRE AND
10 electronic communications THAT ARE entrusted to a communication service
11 provider or remote computing service solely for the purpose of transmission,
12 storage or processing. ORAL, WIRE AND electronic communications THAT ARE in
13 the possession of a person who is entitled to access the contents of such
14 communications for any purpose other than transmission, storage or processing
15 are ordinary business records, ~~and THAT~~ may be obtained by subpoena or court
16 order.

17 B. An agency OR POLITICAL SUBDIVISION of this state ~~or its political~~
18 ~~subdivisions~~ may require the disclosure by a COMMUNICATION SERVICE provider
19 ~~of electronic communication services~~ OR REMOTE COMPUTING SERVICE of the
20 contents of an ORAL, WIRE OR electronic communication that has been in
21 electronic storage for one hundred eighty days or less ~~only by obtaining a~~
22 ~~search warrant pursuant to chapter 38 of this title.~~ IN ONE OF THE FOLLOWING
23 WAYS:

24 1. WITHOUT PRIOR NOTICE TO THE SUBSCRIBER OR PARTY, BY OBTAINING A
25 SEARCH WARRANT ISSUED PURSUANT TO CHAPTER 38, ARTICLE 8 OF THIS TITLE.

26 2. WITH PRIOR NOTICE TO THE SUBSCRIBER OR PARTY, BY SERVING A SUBPOENA,
27 EXCEPT THAT NOTICE MAY BE DELAYED PURSUANT TO SUBSECTION D OF THIS SECTION.

28 3. WITH PRIOR NOTICE TO THE SUBSCRIBER OR PARTY, BY OBTAINING A COURT
29 ORDER ON AN APPLICATION AND CERTIFICATION THAT CONTAINS SPECIFIC AND
30 ARTICULABLE FACTS SHOWING THAT THERE ARE REASONABLE GROUNDS TO BELIEVE THAT
31 THE COMMUNICATION CONTENT SOUGHT IS RELEVANT TO AN ONGOING CRIMINAL
32 INVESTIGATION, EXCEPT THAT NOTICE MAY BE DELAYED PURSUANT TO SUBSECTION D OF
33 THIS SECTION.

34 C. An agency OR POLITICAL SUBDIVISION of this state ~~or its political~~
35 ~~subdivisions~~ may require the disclosure by a COMMUNICATION SERVICE provider
36 ~~of electronic communication services~~ OR REMOTE COMPUTING SERVICE of the
37 contents of an ORAL, WIRE OR electronic communication that has been in
38 electronic storage for more than one hundred eighty days IN ONE OF THE
39 FOLLOWING WAYS:

40 1. Without notice to the subscriber or ~~customer~~ PARTY, by obtaining a
41 search warrant issued pursuant to chapter 38, ARTICLE 8 of this title.

42 2. With prior notice to the subscriber or ~~customer~~ PARTY, by SERVING A
43 subpoena, except that ~~such~~ notice may be delayed pursuant to subsection ~~E~~ D
44 OF THIS SECTION.

1 3. With prior notice to the subscriber or ~~customer if the agency~~
2 ~~obtains~~ PARTY, BY OBTAINING a court order on AN application and
3 certification ~~to the court that the information likely to be obtained is~~
4 ~~relevant to a legitimate law enforcement inquiry~~ THAT CONTAINS SPECIFIC AND
5 ARTICULABLE FACTS SHOWING THAT THERE ARE REASONABLE GROUNDS TO BELIEVE THAT
6 THE COMMUNICATION CONTENT SOUGHT IS RELEVANT TO AN ONGOING CRIMINAL
7 INVESTIGATION, except that ~~such~~ notice may be delayed pursuant to subsection
8 ~~E- D OF THIS SECTION.~~

9 ~~D. An agency of this state or its political subdivisions may require a~~
10 ~~provider of remote computing services to disclose the contents of any~~
11 ~~electronic communication that is held or maintained on that service on behalf~~
12 ~~of a subscriber or customer of the remote computing service solely for the~~
13 ~~purpose of providing storage or computer processing services to the~~
14 ~~subscriber or customer:~~

15 ~~1. Without notice to the subscriber or customer, by obtaining a search~~
16 ~~warrant issued pursuant to chapter 38 of this title.~~

17 ~~2. With prior notice to the subscriber or customer, by subpoena,~~
18 ~~except that such notice may be delayed pursuant to subsection E.~~

19 ~~3. With prior notice to the subscriber or customer if the agency~~
20 ~~obtains a court order on application and certification to the court that the~~
21 ~~information likely to be obtained is relevant to a legitimate law enforcement~~
22 ~~inquiry, except that such notice may be delayed pursuant to subsection E.~~

23 ~~E. An agency acting pursuant to this section may include in its~~
24 ~~subpoena or court order a requirement that the service provider to whom the~~
25 ~~request is directed create a backup copy of the contents of the electronic~~
26 ~~communications sought in order to preserve those communications:~~

27 ~~1. Without notifying the subscriber or customer, the provider shall:~~

28 ~~(a) Create the backup copy as soon as practicable but in no event no~~
29 ~~later than two business days after receipt of the subpoena or order.~~

30 ~~(b) Confirm to the requesting agency that the backup copy has been~~
31 ~~made.~~

32 ~~(c) Promptly deliver the backup copy to the court issuing the subpoena~~
33 ~~or order.~~

34 ~~2. The court shall seal and retain the backup copy or make such other~~
35 ~~provision as it deems necessary to ensure that the backup copy is preserved~~
36 ~~until resolution of any proceedings pursuant to this section.~~

37 ~~3. Within three days after receipt of confirmation, the agency shall~~
38 ~~notify the subscriber or customer of the creation of the backup copy, except~~
39 ~~that notice may be delayed pursuant to this subsection.~~

40 ~~4. Within fourteen days after notice by the agency, the subscriber or~~
41 ~~customer may challenge the agency's request by filing an application to quash~~
42 ~~the subpoena or vacate the court order and serving the requesting agency.~~

43 ~~5. If after response by the agency and such further proceedings as the~~
44 ~~court may deem necessary, the court finds that the applicant is not the~~
45 ~~subscriber or customer for whom the communications sought by the agency are~~

~~maintained by the provider, or that there is reason to believe that the communications sought are relevant to a legitimate law enforcement inquiry, the court shall deny the application and deliver the backup copy to the requesting agency. If the court finds that the applicant is the subscriber or customer for whom the communications sought by the agency are maintained, and that there is no reason to believe the communications sought are relevant to a legitimate law enforcement inquiry, the court shall grant the application and order the backup copy to be destroyed.~~

~~6. The court shall release the backup copy to the requesting agency no sooner than fourteen days after the agency's notice to the subscriber or customer if the subscriber or customer has not filed a challenge to the subpoena or court order.~~

~~7. The court shall not destroy the backup copy until the information requested is delivered or until the resolution of any proceedings arising from a challenge to the subpoena or order.~~

F. D. EXCEPT AS PROVIDED IN SUBSECTION E OF THIS SECTION, THE notice to the subscriber or ~~customer~~ **PARTY THAT IS** required by this section may be delayed for a period of not to exceed ninety days under any of the following circumstances:

1. If the applicant for a search warrant or court order pursuant to this section requests a delay of notification and the court finds that ~~such~~ delay is necessary to protect the safety of any person or to prevent flight from prosecution, tampering with evidence, intimidation of witnesses or jeopardizing an investigation.

2. If the investigator or prosecuting attorney proceeding by subpoena executes a written certification that there is reason to believe that notice to the subscriber or ~~customer~~ **PARTY** may result in danger to the safety of any person, flight from prosecution, tampering with evidence, intimidation of witnesses or jeopardizing an investigation. The agency shall retain a true copy of the certification **WITH THE SUBPOENA.**

~~3. E.~~ **E.** If further delay of notification is necessary, extensions of up to ninety days each may be obtained by application to the court or certification pursuant to ~~paragraphs 1 and 2 of this~~ subsection **D OF THIS SECTION.**

~~4. F.~~ **F.** Any agency acting pursuant to this section may apply for a court order directing the communication ~~or computing~~ service provider **OR REMOTE COMPUTING SERVICE** not to notify any other person of the existence of the subpoena, court order or warrant for such period as the court deems appropriate. The court shall grant the application if it finds that there is reason to believe that notice may cause an adverse result described in ~~paragraphs 1 and 2 of this~~ subsection **D OF THIS SECTION.** A person who violates an order issued pursuant to this subsection is guilty of a class 1 misdemeanor.

1 ~~5-~~ G. On the expiration of any period of delay under this section,
2 the agency shall deliver to the subscriber or ~~customer~~ PARTY a copy of the
3 process used and notice including:

4 ~~(a)~~ 1. That information was requested from the service provider.

5 ~~(b)~~ 2. The date on which the information was requested.

6 ~~(c)~~ 3. That notification to the subscriber or ~~customer~~ PARTY was
7 delayed.

8 ~~(d)~~ 4. The identity of the court or agency ordering or certifying the
9 delay.

10 ~~(e)~~ 5. The provision of this section by which delay was obtained.

11 ~~(f)~~ 6. That any challenge to the subpoena or order must be filed
12 within fourteen days.

13 H. ON THE REQUEST OF AN AGENCY OR POLITICAL SUBDIVISION OF THIS STATE,
14 A COMMUNICATION SERVICE PROVIDER OR REMOTE COMPUTING SERVICE SHALL TAKE ALL
15 NECESSARY STEPS TO PRESERVE RECORDS, COMMUNICATION CONTENT AND OTHER EVIDENCE
16 IN ITS POSSESSION PENDING THE ISSUANCE OF A COURT ORDER OR OTHER
17 PROCESS. THE COMMUNICATION SERVICE PROVIDER OR REMOTE COMPUTING SERVICE
18 SHALL RETAIN THE PRESERVED RECORDS, COMMUNICATION CONTENT AND OTHER EVIDENCE
19 FOR NINETY DAYS. ON THE RENEWED REQUEST OF AN AGENCY OR POLITICAL
20 SUBDIVISION, THE PRESERVATION PERIOD MAY BE EXTENDED FOR AN ADDITIONAL NINETY
21 DAYS. EXCEPT AS PROVIDED IN SECTION 13-3011, A PERSON SHALL NOT NOTIFY THE
22 SUBSCRIBER OR PARTY DURING THE PERIOD OF THE PRESERVATION REQUEST.

23 Sec. 21. Renumber

24 Section 13-3018, Arizona Revised Statutes, is renumbered as section
25 13-3019.

26 Sec. 22. Title 13, chapter 30, Arizona Revised Statutes, is amended by
27 adding a new section 13-3018, to read:

28 13-3018. Communication service records; subpoenas; application;
29 certification; definition

30 A. THIS SECTION APPLIES TO ALL COMMUNICATION SERVICE PROVIDERS THAT DO
31 BUSINESS IN THIS STATE OR THAT FURNISH COMMUNICATION SERVICES TO PERSONS
32 WITHIN THIS STATE.

33 B. THE PROSECUTOR MAY ISSUE A SUBPOENA DUCES TECUM TO A COMMUNICATION
34 SERVICE PROVIDER IN ORDER TO OBTAIN COMMUNICATION SERVICE RECORDS IN
35 CONNECTION WITH A CRIMINAL INVESTIGATION OR PROSECUTION FOR ANY OFFENSE IN
36 WHICH A PROSECUTOR SUSPECTS THAT A COMPUTER OR NETWORK WAS USED. THIS
37 SUBSECTION DOES NOT PREVENT THE PROSECUTOR FROM OBTAINING A GRAND JURY
38 SUBPOENA DUCES TECUM.

39 C. THE PROSECUTOR WHO ISSUES A SUBPOENA PURSUANT TO THIS SECTION SHALL
40 CERTIFY IN THE BODY OF THE SUBPOENA THAT THE INFORMATION LIKELY TO BE
41 OBTAINED IS RELEVANT TO AN ONGOING CRIMINAL INVESTIGATION.

42 D. AN AUTHORIZED REPRESENTATIVE OF A COMMUNICATION SERVICE PROVIDER
43 MAY CERTIFY COMMUNICATION SERVICE RECORDS THAT ARE OBTAINED BY SUBPOENA IF
44 ALL OF THE FOLLOWING APPLY:

1 1. THE RECORDS ARE THE REGULAR COMMUNICATION SERVICE RECORDS THAT ARE
2 USED AND KEPT BY THE COMMUNICATION SERVICE PROVIDER.

3 2. THE RECORDS ARE MADE AT OR NEAR THE TIME THE UNDERLYING
4 COMMUNICATIONS OCCUR IN THE ORDINARY COURSE OF BUSINESS.

5 3. THE AUTHORIZED REPRESENTATIVE CERTIFIES THAT THE RECORD PRODUCED IN
6 RESPONSE TO THE SUBPOENA IS AN ACCURATE COPY OF THE COMMUNICATION SERVICE
7 PROVIDER RECORDS.

8 E. CERTIFIED COMMUNICATION SERVICE RECORDS THAT ARE OBTAINED BY
9 SUBPOENA MAY BE INTRODUCED IN EVIDENCE AT A HEARING OR TRIAL AND CONSTITUTE
10 PRIMA FACIE EVIDENCE OF THE FACTS CONTAINED IN THE RECORDS.

11 F. IF A CERTIFICATION OF COMMUNICATION SERVICE PROVIDER RECORDS IS
12 ACKNOWLEDGED BY ANY NOTARY OR OTHER OFFICER WHO IS AUTHORIZED BY LAW TO TAKE
13 ACKNOWLEDGMENTS, THE CERTIFICATION SHALL BE RECEIVED IN EVIDENCE WITHOUT
14 FURTHER PROOF OF ITS AUTHENTICITY.

15 G. FOR THE PURPOSES OF THIS SECTION, "COMMUNICATION SERVICE RECORDS"
16 INCLUDES SUBSCRIBER INFORMATION, INCLUDING NAME, BILLING OR INSTALLATION
17 ADDRESS, LENGTH OF SERVICE, PAYMENT METHOD, TELEPHONE NUMBER, ELECTRONIC
18 ACCOUNT IDENTIFICATION AND ASSOCIATED SCREEN NAMES, TOLL BILLS OR ACCESS
19 LOGS, RECORDS OF THE PATH OF AN ELECTRONIC COMMUNICATION BETWEEN THE POINT OF
20 ORIGIN AND THE POINT OF DELIVERY AND THE NATURE OF THE COMMUNICATION SERVICE
21 PROVIDED, SUCH AS CALLER IDENTIFICATION, AUTOMATIC NUMBER IDENTIFICATION,
22 VOICE MAIL, ELECTRONIC MAIL, PAGING OR OTHER SERVICE FEATURES. COMMUNICATION
23 SERVICE RECORDS DO NOT INCLUDE THE CONTENT OF ANY STORED ORAL, WIRE OR
24 ELECTRONIC COMMUNICATION.

25 Sec. 23. Section 13-3019, Arizona Revised Statutes, as renumbered by
26 this act, is amended to read:

27 13-3019. Surreptitious photographing, videotaping, filming or
28 digitally recording; exemptions; violation;
29 classification; definitions

30 A. It is unlawful for any person to knowingly photograph, videotape,
31 film, digitally record or by any other means **USE A DEVICE TO** secretly view or
32 record another person without that person's consent under both of the
33 following circumstances:

34 1. In a restroom, bathroom, locker room, bedroom or other location
35 where the person has a reasonable expectation of privacy.

36 2. While the person is urinating, defecating, dressing, undressing,
37 nude or involved in sexual intercourse or sexual contact.

38 B. It is unlawful to disclose, display, distribute or publish a
39 photograph, videotape, film or digital recording made in violation of
40 subsection A of this section without the consent of the person depicted.

41 C. This section does not apply to:

42 1. Photographing, videotaping, filming or digitally recording for
43 security purposes where notice of the use of photographing, videotaping,
44 filming or digital recording equipment is clearly posted in the location.✚

1 2. Photographing, videotaping, filming or digitally recording by
2 correctional officials for security reasons or in connection with the
3 investigation of alleged misconduct of persons on the premises of a jail or
4 prison. ~~;- or~~

5 3. Photographing, videotaping, filming or digitally recording by law
6 enforcement officers pursuant to an investigation, which is otherwise lawful.

7 4. **THE USE OF A CHILD MONITORING DEVICE AS DEFINED IN SECTION 13-3001.**

8 D. A violation of subsection A or B of this section is a class 5
9 felony.

10 E. For **THE** purposes of this section "sexual contact" and "sexual
11 intercourse" have the same ~~meaning as~~ **MEANINGS** prescribed in section 13-1401.

12 Sec. 24. Section 13-3417, Arizona Revised Statutes, is amended to
13 read:

14 **13-3417. Use of wire communication or electronic communication**
15 **in drug related transactions; classification**

16 A. It is unlawful for a person to use any wire communication or
17 electronic communication as defined in section ~~13-3004~~ **13-3001** to facilitate
18 the violation of any felony provision or to conspire to commit any felony
19 provision of this chapter or chapter 23 of this title.

20 B. Any offense committed by use of a wire communication or electronic
21 communication as set forth in this section is deemed to have been committed
22 at the place where the transmission or transmissions originated or at the
23 place where the transmission or transmissions were received.

24 C. A person who violates this section is guilty of a class 4 felony
25 except if the felony facilitated carries a class 5 or 6 designation in which
26 case a violation of this section shall carry the same classification as the
27 felony facilitated.

28 Sec. 25. Section 13-3506, Arizona Revised Statutes, is amended to
29 read:

30 **13-3506. Obscene or harmful items; minors; classification**

31 A. It is unlawful for any person, with knowledge of the character of
32 the item involved, to recklessly **TRANSMIT**, furnish, present, provide, make
33 available, give, lend, show, advertise, **OFFER** or distribute to minors any
34 item ~~which~~ **THAT** is harmful to minors.

35 **B. IN AN ACTION FOR A VIOLATION OF THIS SECTION, PROOF OF ANY OF THE**
36 **FOLLOWING MAY GIVE RISE TO AN INFERENCE THAT THE PERSON KNEW OR SHOULD HAVE**
37 **KNOWN THAT THE RECIPIENT OF AN ADVERTISEMENT OR OFFER WAS A MINOR:**

38 1. **THE NAME, ACCOUNT, PROFILE, WEB PAGE OR ADDRESS OF THE RECIPIENT**
39 **CONTAINED INDICIA THAT THE RECIPIENT IS A MINOR.**

40 2. **THE RECIPIENT OR ANOTHER PERSON PREVIOUSLY NOTIFIED THE PERSON BY**
41 **ANY REASONABLE MEANS THAT THE RECIPIENT IS A MINOR.**

42 3. **THE RECIPIENT'S ELECTRONIC MAIL OR WEB PAGE CONTAINS INDICIA THAT**
43 **THE ADDRESS OR DOMAIN NAME IS THE PROPERTY OF, OR THAT THE VISUAL DEPICTION**
44 **ULTIMATELY WILL BE STORED AT, A SCHOOL AS DEFINED IN SECTION 13-609.**

~~B.~~ C. A violation of ~~any provision of~~ this section is a class 4 felony.

Sec. 26. Repeal

Section 13-3508, Arizona Revised Statutes, is repealed.

Sec. 27. Section 13-3551, Arizona Revised Statutes, is amended to read:

13-3551. Definitions

In this chapter, unless the context otherwise requires:

1. "COMMUNICATION SERVICE PROVIDER" HAS THE SAME MEANING PRESCRIBED IN SECTION 13-3004.

2. "COMPUTER" HAS THE SAME MEANING PRESCRIBED IN SECTION 13-2301, SUBSECTION E.

3. "COMPUTER SYSTEM" HAS THE SAME MEANING PRESCRIBED IN SECTION 13-2301, SUBSECTION E.

~~1.~~ 4. "Exploitive exhibition" means the actual or simulated exhibition of the genitals or pubic or rectal areas of any person for the purpose of sexual stimulation of the viewer.

5. "NETWORK" HAS THE SAME MEANING PRESCRIBED IN SECTION 13-2301, SUBSECTION E.

~~2.~~ 6. "Producing" means financing, directing, manufacturing, issuing, publishing or advertising for pecuniary gain.

7. "REMOTE COMPUTING SERVICE" HAS THE SAME MEANING PRESCRIBED IN SECTION 13-3004.

~~3.~~ 8. "Sexual conduct" means actual or simulated:

(a) Sexual intercourse, including genital-genital, oral-genital, anal-genital or oral-anal, whether between persons of the same or opposite sex.

(b) Penetration of the vagina or rectum by any object except when done as part of a recognized medical procedure.

(c) Sexual bestiality.

(d) Masturbation, for the purpose of sexual stimulation of the viewer.

(e) Sadomasochistic abuse for the purpose of sexual stimulation of the viewer.

(f) Defecation or urination for the purpose of sexual stimulation of the viewer.

~~4.~~ 9. "Simulated" means any depicting of the genitals or rectal areas ~~which~~ THAT gives the appearance of sexual conduct or incipient sexual conduct.

~~5.~~ 10. "Visual depiction" includes each visual image that is contained in an undeveloped film, videotape or photograph or data stored in any form and that is capable of conversion into a visual image.

1 Sec. 28. Section 13-3553, Arizona Revised Statutes, is amended to
2 read:

3 13-3553. Sexual exploitation of a minor; evidence; exemption;
4 classification

5 A. A person commits sexual exploitation of a minor by knowingly:

6 1. Recording, filming, photographing, developing or duplicating any
7 visual depiction in which minors are engaged in exploitive exhibition or
8 other sexual conduct.

9 2. Distributing, transporting, exhibiting, receiving, selling,
10 purchasing, electronically transmitting, possessing or exchanging any visual
11 depiction in which minors are engaged in exploitive exhibition or other
12 sexual conduct.

13 B. IF ANY VISUAL DEPICTION OF SEXUAL EXPLOITATION OF A MINOR IS
14 ADMITTED INTO EVIDENCE, THE COURT SHALL SEAL THAT EVIDENCE AT THE CONCLUSION
15 OF ANY GRAND JURY PROCEEDING, HEARING OR TRIAL.

16 ~~B.~~ C. Sexual exploitation of a minor is a class 2 felony and if the
17 minor is under fifteen years of age it is punishable pursuant to section
18 13-604.01.

19 Sec. 29. Renumber

20 Sections 13-3554, 13-3555 and 13-3556, Arizona Revised Statutes, are
21 renumbered as sections 13-3555, 13-3556 and 13-3558, respectively.

22 Sec. 30. Title 13, chapter 35.1, Arizona Revised Statutes, is amended
23 by adding a new section 13-3554, to read:

24 13-3554. Luring a minor for sexual exploitation; classification

25 A. A PERSON COMMITS LURING A MINOR FOR SEXUAL EXPLOITATION BY OFFERING
26 OR SOLICITING SEXUAL CONDUCT WITH ANOTHER PERSON KNOWING OR HAVING REASON TO
27 KNOW THAT THE OTHER PERSON IS A MINOR.

28 B. IT IS NOT A DEFENSE TO A PROSECUTION FOR A VIOLATION OF THIS
29 SECTION THAT THE OTHER PERSON WAS A PEACE OFFICER POSING AS A MINOR.

30 C. LURING A MINOR FOR SEXUAL EXPLOITATION IS A CLASS 3 FELONY, AND IF
31 THE MINOR IS UNDER FIFTEEN YEARS OF AGE IT IS PUNISHABLE PURSUANT TO SECTION
32 13-604.01.

33 Sec. 31. Title 13, chapter 35.1, Arizona Revised Statutes, is amended
34 by adding sections 13-3557 and 13-3559, to read:

35 13-3557. Equipment; forfeiture

36 ON THE CONVICTION OF A PERSON FOR A VIOLATION OF SECTION 13-3552,
37 13-3553 OR 13-3554, THE COURT SHALL ORDER THAT ANY PHOTOGRAPHIC EQUIPMENT,
38 COMPUTER SYSTEM OR INSTRUMENT OF COMMUNICATION THAT IS OWNED OR USED
39 EXCLUSIVELY BY THE PERSON AND THAT WAS USED IN THE COMMISSION OF THE OFFENSE
40 BE FORFEITED AND SOLD, DESTROYED OR OTHERWISE PROPERLY DISPOSED.

41 13-3559. Reporting suspected visual depictions of sexual
42 exploitation of a minor; immunity

43 A. ANY COMMUNICATION SERVICE PROVIDER, REMOTE COMPUTING SERVICE,
44 SYSTEM ADMINISTRATOR, COMPUTER REPAIR TECHNICIAN OR OTHER PERSON WHO
45 DISCOVERS SUSPECTED VISUAL DEPICTIONS OF SEXUAL EXPLOITATION OF A MINOR ON A

1 COMPUTER, COMPUTER SYSTEM OR NETWORK OR IN ANY OTHER STORAGE MEDIUM MAY
2 REPORT THAT DISCOVERY TO A LAW ENFORCEMENT OFFICER.

3 B. A PERSON WHO ON DISCOVERY IN GOOD FAITH REPORTS THE DISCOVERY OF
4 SUSPECTED VISUAL DEPICTIONS OF SEXUAL EXPLOITATION OF A MINOR IS IMMUNE FROM
5 CIVIL LIABILITY.

6 C. IT IS AN AFFIRMATIVE DEFENSE TO A PROSECUTION FOR A VIOLATION OF
7 SECTION 13-3553 THAT ON DISCOVERY A PERSON IN GOOD FAITH REPORTS THE
8 DISCOVERY OF UNSOLICITED SUSPECTED VISUAL DEPICTIONS INVOLVING THE SEXUAL
9 EXPLOITATION OF A MINOR.

10 Sec. 32. Section 13-3707, Arizona Revised Statutes, is amended to
11 read:

12 13-3707. Telecommunication fraud; classification; definitions

13 A. A person commits telecommunication fraud if the person does any of
14 the following:

15 1. With the intent to defraud another of the lawful charge for
16 telecommunication service, obtains or attempts to obtain any
17 telecommunication service by:

18 (a) Charging or attempting to charge ~~such~~ THE TELECOMMUNICATION
19 service EITHER:

20 (i) To an existing ELECTRONIC MAIL ADDRESS, telephone number or credit
21 card number without the authority of the person to whom issued or the
22 subscriber ~~thereto~~ TO or the lawful holder ~~thereof, or~~ OF THE ADDRESS OR
23 NUMBER.

24 (ii) To a nonexistent, counterfeit, revoked or canceled credit card
25 number, ~~or by~~.

26 (b) Any method of code calling, ~~or by~~.

27 (c) Installing, rearranging, ~~or~~ tampering with any facility or
28 equipment, ~~or by~~.

29 (d) The use of any other fraudulent means, method, trick or device.

30 2. WITH THE INTENT THAT THE SAME BE USED OR EMPLOYED TO EVADE A LAWFUL
31 CHARGE FOR ANY TELECOMMUNICATION SERVICE, sells, rents, lends, gives or
32 otherwise transfers or discloses or attempts to transfer or disclose to
33 another, or offers or advertises for sale or rental, the number or code of an
34 existing, canceled, revoked or nonexistent ELECTRONIC MAIL ADDRESS, telephone
35 number or credit card number or THE method of numbering or coding ~~which~~ THAT
36 is employed in the issuance of telephone numbers, account identification
37 codes or credit card numbers ~~with intent that the same be used or employed to~~
38 ~~evade a lawful charge for any telecommunication service.~~

39 3. Knowingly makes, constructs, manufactures, fabricates, erects,
40 assembles or possesses any SOFTWARE, instrument, apparatus, equipment or
41 device, or any part ~~thereof~~ OF ANY SOFTWARE, INSTRUMENT, APPARATUS, EQUIPMENT
42 OR DEVICE, THAT IS designed, ~~OR~~ adapted or ~~which~~ THAT can be used EITHER:

43 (a) To obtain telecommunication service by fraud in violation of THIS
44 subsection ~~A of this section; or~~.

1 (b) To conceal from any supplier of telecommunication service or from
2 any lawful authority the existence or place of origin or of destination of
3 any telecommunication in order to obtain telecommunication service by fraud
4 in violation of THIS subsection ~~A of this section~~.

5 4. Knowingly sells, rents, lends, gives, or otherwise transfers or
6 discloses or attempts to transfer or disclose to another, or offers or
7 advertises for sale or rental, any:

8 (a) SOFTWARE, instrument, apparatus, equipment or device described in
9 paragraph 3 of this subsection, ~~or~~.

10 (b) Plans, specifications or instructions for making or assembling ~~the~~
11 ~~same~~ ANY SOFTWARE, INSTRUMENT, APPARATUS, EQUIPMENT OR DEVICE with the intent
12 to use or employ such SOFTWARE, instrument, apparatus, equipment or device,
13 or any part ~~thereof~~, OF ANY SOFTWARE, INSTRUMENT, APPARATUS, EQUIPMENT OR
14 DEVICE or to allow ~~the same~~ ANY SOFTWARE, INSTRUMENT, APPARATUS, EQUIPMENT OR
15 DEVICE to be used or employed, for a purpose described in paragraph 3 of this
16 subsection, ~~or that the~~.

17 (c) Plans, specifications or instructions ~~are intended to~~ WITH THE
18 INTENT THAT THE PLANS, SPECIFICATIONS OR INSTRUCTIONS be used for making or
19 assembling such SOFTWARE, instrument, apparatus, equipment or device, or any
20 part ~~thereof~~ OF ANY SOFTWARE, INSTRUMENT, APPARATUS, EQUIPMENT OR DEVICE.

21 B. Subsection A, paragraph 3 of this section does not prohibit the use
22 or possession of any SOFTWARE, instrument, apparatus, equipment or device by
23 either of the following:

24 1. Law enforcement officers who are acting in their official capacity
25 within the scope of their authority and in the line of duty.

26 2. Employees or agents of communication service providers as defined
27 in section ~~13-3004~~ 13-3001 who are acting in their official capacity within
28 the scope of their employment for the purpose of protecting the property or
29 legal rights of the provider.

30 C. THIS SECTION APPLIES WHEN THE TELECOMMUNICATION SERVICE ORIGINATES
31 OR TERMINATES OR BOTH ORIGINATES AND TERMINATES IN THIS STATE.

32 ~~C.~~ D. Telecommunications TELECOMMUNICATION fraud is a class 3 felony.

33 ~~D.~~ E. As used in this section:

34 ~~1. "Telecommunication services" includes telephone and telegraph~~
35 ~~services and all other services involving the transmission of information by~~
36 ~~wire, radio, cellular, wireless transmission or similar means. This section~~
37 ~~applies when the telecommunication service originates or terminates or both~~
38 ~~originates and terminates in this state.~~

39 ~~2.~~ 1. "Credit card number" means the card number appearing on a
40 credit card, ~~or~~ telephone calling card ~~which~~ OR ACCESS DEVICE AS DEFINED IN
41 SECTION 13-2001 THAT is ~~an identification card or plate~~ issued to a person by
42 any supplier of telecommunication service and ~~which~~ THAT permits the person
43 to whom the card OR ACCESS DEVICE has been issued to obtain telecommunication
44 service.

2. "TELECOMMUNICATION SERVICE" INCLUDES ELECTRONIC COMMUNICATION SERVICES, SUBSCRIPTION COMPUTER SERVICES, TELEPHONE AND TELEGRAPH SERVICES AND ALL OTHER SERVICES THAT INVOLVE THE TRANSMISSION OF INFORMATION BY WIRE, RADIO, CELLULAR, WIRELESS TRANSMISSION OR SIMILAR MEANS.

Sec. 33. Section 13-4801, Arizona Revised Statutes, is amended to read:

13-4801. Definitions

In this chapter, unless the context otherwise requires:

1. "Acquire" means to electronically capture, record, reveal or otherwise access by means of any instrument, device or equipment a cellular or wireless telephone's electronic serial number or mobile identification number without the consent of the communication service provider.

2. "Cellular telephone" means a communication device that contains an electronic serial number and the operation of which depends on the transmission of that electronic serial number together with the mobile identification number in the form of radio signals through cell sites and mobile switching stations.

3. "Cloned cellular or wireless telephone" means a cellular or wireless telephone in which the manufacturer's electronic serial number has been altered.

4. "Cloning paraphernalia" means the materials that are necessary to create a cloned cellular or wireless telephone and includes scanners to intercept electronic serial numbers, cellular telephones and mobile identification numbers, wireless telephones, cables, chips, burners, software and the computers containing the software to program a cloned cellular or wireless telephone's microchip with a false electronic serial number and mobile identification number combination and lists of electronic serial number and mobile identification number combinations.

5. "Communication service provider" has the same meaning prescribed in section ~~13-3004~~ 13-3001.

6. "Electronic serial number" means the unique numerical algorithm that the manufacturer programs into the microchip of each wireless telephone.

7. "Mobile identification number" means the cellular or wireless telephone number that the cellular or wireless telephone carrier assigns to the wireless telephone.

8. "Wireless telephone" means a communication device that transmits radio, satellite or other mobile telephone communication.

Sec. 34. Section 21-422, Arizona Revised Statutes, is amended to read:

21-422. Powers and duties

A. The law applicable to county grand juries, including their powers, duties and functions, ~~shall apply~~ APPLIES to the state grand juries except insofar as it is in conflict with this article. The ~~Arizona~~ supreme court shall ~~promulgate~~ ADOPT rules ~~and regulations~~ to govern the procedures of state grand juries.

1 B. The state grand jury shall investigate and return indictments for
2 only those offenses or violations of law ARISING OUT OF OR IN CONNECTION
3 WITH:

4 1. ~~Arising out of or in connection with~~ The determination or
5 collection of state taxes, the registration or failure to register
6 securities, the offer or sale of securities, the offer or sale of interests
7 in land, the formation or operation of banks, insurance companies, pension
8 funds, labor unions, professional sports enterprises, corporate enterprises,
9 or business enterprises, the making or collecting of loans, events leading to
10 receivership or declaration of bankruptcy by a business enterprise, the sale
11 or purchase of goods or services by or for the state or political
12 subdivisions, bribery, obstruction of justice, hindering prosecution or any
13 form of intentional, knowing or corrupt misconduct involving any person
14 compensated by public funds. ~~;-or~~

15 2. ~~Arising out of or in connection with~~ Any fraud, theft or
16 possession, receipt, sale or transportation of stolen property or other
17 contraband, or gambling or prostitution or narcotics, which occurs in more
18 than one county or which occurs in one county and affects the residents of
19 another county or which may be prosecuted by more than one county attorney. ~~÷~~
20 ~~or~~

21 3. ~~Arising out of or in connection with~~ Perjury, false swearing,
22 unsworn falsification, or any violation of title 13, chapter 28 in connection
23 with any state grand jury proceeding, committed by any person testifying
24 before it or in any trial or other proceeding involving any indictment
25 returned by a state grand jury. ~~;-or~~

26 4. ~~Arising out of or in connection with~~ Any perjury by subornation or
27 attempted perjury by subornation relating to testimony before it or in any
28 trial or other proceeding involving any indictment returned by a state grand
29 jury. ~~;-or~~

30 5. ~~Arising out of or in connection with~~ Any violation of title 13,
31 chapter 23 or section 38-421 or 39-161.

32 6. ANY VIOLATION OF TITLE 13, CHAPTER 35.1 IF COMMITTED USING A
33 COMPUTER OR NETWORK AS DEFINED IN SECTION 13-2301 AND IF ANY PART OF THE
34 CONDUCT EITHER:

35 (a) OCCURS IN MORE THAN ONE COUNTY, STATE OR COUNTRY.

36 (b) AFFECTS THE RESIDENTS OF ANOTHER COUNTY, STATE OR COUNTRY.

37 (c) MAY BE PROSECUTED BY MORE THAN ONE COUNTY, STATE OR COUNTRY.

38 7. ANY CRIMINAL WRONGDOING THAT IS REFERRED IN WRITING BY A COUNTY
39 ATTORNEY AND THAT IS ACCEPTED IN WRITING BY THE ATTORNEY GENERAL.

40 C. If a state grand jury, pursuant to an investigation under
41 subsection B of this section, learns of an offense for which it lacks
42 jurisdiction to indict, the grand jury shall direct the attorney general to
43 inform the appropriate prosecutorial authority.

44 D. Nothing in this article shall be construed to limit the
45 jurisdiction of the county grand juries or county attorneys, nor shall an

1 investigation by a state grand jury be deemed preemptive of a previously
2 instituted investigation by another grand jury or agency having jurisdiction
3 under the same subject matter unless good cause is shown.

4 Sec. 35. Section 31-281, Arizona Revised Statutes, is amended to read:

5 31-281. Deoxyribonucleic acid identification; sexual offenses

6 A. A person WHO IS convicted of or adjudicated delinquent for a sexual
7 offense or attempt to commit a sexual offense as provided in section 13-1403,
8 13-1404, 13-1405, 13-1406, 13-1410, 13-1411, 13-1412, 13-1417 or 13-3608 or
9 WHO IS convicted of or adjudicated delinquent for a violation of section
10 13-3821, 13-3822, ~~or~~ 13-3824, 13-3552, 13-3553 OR 13-3554 and any person who
11 is accepted under the interstate compact for the supervision of parolees and
12 probationers and has arrived in this state shall submit to deoxyribonucleic
13 acid testing for law enforcement identification purposes. THE DEPARTMENT OF
14 PUBLIC SAFETY SHALL MAINTAIN reports of the tests ~~shall be maintained by the~~
15 ~~department of public safety.~~

16 B. A person who is tested pursuant to subsection A of this section and
17 who has sufficient financial ability shall pay for the costs of the testing.
18 The cost to the person shall not exceed five hundred dollars. All monies
19 received pursuant to this subsection shall be transmitted to the state
20 treasurer for deposit in the Arizona deoxyribonucleic acid identification
21 system fund established by section 41-2419.

22 C. IF A JUVENILE IS ADJUDICATED DELINQUENT AND IS TESTED PURSUANT TO
23 SUBSECTION A OF THIS SECTION, THE results of ~~any tests secured pursuant to~~
24 ~~this section from a person adjudicated delinquent~~ THE TEST may be used for
25 any law enforcement identification purpose, including adult prosecutions.

26 Sec. 36. Section 44-405, Arizona Revised Statutes, is amended to read:

27 44-405. Preservation of secrecy; definition

28 A. In an action under this chapter OR SECTION 13-1802 OR 13-2316.02 a
29 court shall preserve the secrecy of an alleged trade secret by reasonable
30 means, ~~which may include.~~

31 B. FOR THE PURPOSES OF THIS SECTION, "REASONABLE MEANS" INCLUDES
32 granting protective orders in connection with discovery proceedings, holding
33 in camera hearings, sealing the records of the action or ordering a person
34 involved in the litigation not to disclose an alleged trade secret without
35 prior court approval.

36 Sec. 37. Severability

37 If a provision of this act or its application to any person or
38 circumstances is held invalid, the invalidity does not affect other
39 provisions or applications of the act that can be given effect without the
40 invalid provision or application, and to this end the provisions of this act
41 are severable.